REGD. GOA - 5

Panaji, 13th April, 2000 (Chaitra 24, 1922) SERIES II No. 2

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

—

Ord

No. 28/9/89-ILD

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

F. O. D'Costa, Under Secretary (Labour).

Panaji, 23rd June, 1995.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/30/89

Workmen Rep. by
The General Secretary,
The Goa Union of Journalists,
Panaji-Goa. — Workmen/Party I

v/s

M/s Novem Goem Pratishthan,
Maddel, Margao-Goa. — Employer/Party II

Party I represented by Adv. S. Sonak.

Party II represented by Adv. F. S. Moraes.

Panaji, Dated:24-4-1995.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 12th April, 1989 bearing No. 28/9/89-ILD referred the following issue for adjudication by this Tribunal:

Whether refusal of employment to the following 18 workmen with effect from 16-6-1988, consequent upon suspension of operation by the management of M/s Novem Goem Pratishthan, Margao amounts to termination of services of these 18 workmen?

1. Shri Inacio Colaco, Shift in Charge.
2. Shri Caetano D'Silva, Compositor.
3. Shri Seby D'Cruz, Compositor.
4. Shri Agnelo D'Costa, Compositor.
5. Miss Nirmala Tandel, Compositor.
6. Mrs. Shevanti Naik, Compositor.
7. Shri Salvador Fernandes, Helper.
8. Shri Sidonio D'Silva, Helper.
9. Shri Kamlekar Goankar, Compositor.
10. Shri Aparicio Noronha, Helper.
11. Shri Damu Lotlikar, Helper.
12. Shri Aurelio Viegas, Sub-Editor.
13. Shri Rohidas Naik, Printer.
14. Shri Roque Colaco, Proof Reader.
15. Shri Subhash Azgaonkar, Compositor.
16. Shri Anthony Fernandes, Ch. Reporter.
17. Shri Ratial Naik, Bill Collector.
18. Miss Asha Naik, Compositor.

2. If so, whether it is legal and justified and to what relief the workmen are entitled?

3. If not, what benefits and relief the workmen are entitled to?"

2. On receipt of the reference a case was registered under No. IT/30/89 and Registered A/D notice, was issued to the parties. In pursuance to the said notice, parties put in their

appearance. The Party I (For short, 'Workmen') were represented by Adv. S. Sonak and the Party II (For short, 'Employer') was represented by Adv. F. S. Moraes. The workmen filed a statement of claim at Exb. 2. The facts of the case in brief as pleaded by the workmen in their statement of claim are that the employer is a Trust constituted under Indian Trust Act, 1882. That in the year 1982 the Employer started a daily newspaper in Konkani (Roman script) entitled "Novem Goem" and employed persons in various categories such as Compositors, Helpers, Shift in charge, Sub. Editors, Printers, Proof Readers, Reporters etc. The workmen were such persons employed by the employer on different dates between the period 1982 to 1987. On 16-6-88 when the workmen reported for work they were told orally by the employer not to report for work on the pretext that operation of the publication of the newspaper was suspended by the employer. The contention of the workmen is that the suspension of the operation of publication amounted to refusal of employment and no notice was given to the workmen by the Employer in this respect. However, the employer carried out different other activities and provided employment to workmen of other category belonging to office administration. The workmen contended that there was no suspension of operation but the employer resorted to unfair labour practice only because the workmen had claimed benefits given under Palekar Award for working as well as non-working journalists. According to the workmen, the action of refusal of employment does not amount to termination of services as no notice was given by the employer nor retrenchment compensation was paid and therefore the workmen are entitled to full back wages from 16-6-88. The workmen have further contended that in case it is found that the Employer has in fact suspended the operation of publication of the newspaper the action would amount to closure and in that event the workmen are entitled to wages in lieu of one month's wages, retrenchment compensation, gratuity and wages in lieu of leave balance at the credit of the workmen from the last date.

3. The employer filed the written statement which is at Exb, 3. The contention of the Employer is that it started the daily newspaper, "Novem Goem" on 5-8-82 on obtaining loan of Rs. 1 lakh from Madgaum Urban Co-operative Bank by mortgaging the machinery of the press. The Employer had to face many difficulties from time to time in running the daily and the workmen were aware of the same. That the Govt., of Goa, reduced the advertisements on which the employer mostly depended, though the amounts derived from such advertisements were totally negligible. Even though the employer published the daily for 6 years. In order to save the situation, the Chairman, The Secretary and the Publisher of the daily. "Novem Goem Pratishthan" obtained personal loan of Rs. 45,000/- from a Bank of which the workmen were aware. The employer also took steps to reduce the expenditure by laying off half of the workers for 3 months, reducing the number of pages from 6 to 4 and terminating the services of one workman i. e. of the Proof Reader who had worked for less than 6 months. The employer contended that inspite of the facts that above measures were taken they were still recurring losses and hence the loan taken from the Bank remained unpaid though the wages of the workers were paid, till June, 1988. The employer contended that the closure of the daily was due to financial crisis and the workers were informed about the same and some of the workers sought employment elsewhere. The employer denied that it carried out activities and provided employment to workers of the other categories belonging to office administration. The employer also denied that it resorted to unfair labour practice because the workers demanded benefits given under Palekar Award. The Employer contended that the benefit could not be given because of the financial difficulties faced by the employer. The employer further contended that on 16-6-88 the workers were told not to report for work as the employer had permanently closed the operations of publication thereby closing the daily and the workers were aware of the same. According to the employer the closure effected by it was legal and justified as the same was as a result of financial difficulties faced by the employer and the termination of the services of the workmen was as a result of the closure of the daily newspaper, "Novem Goem". Thereafter the workman filed rejoinder which is at Exb. 4 controverting the pleadings made by the employer in his written statement.

4. From the pleadings of the parties following issues were framed at Exb. 5.

1. Does Party No. I prove that the alleged closure of business by Party No. II was not legal and proper?

2. If not, does Party No. I prove that the act of Party No. II in refusing employment to the workers does not amount to retrenchment in law?

3. If not, does Party No. I prove that the order of termination of the workers is not legal and justified?

4. If yes, is Party No. I entitled to any relief?

5. What award or Order?

The Issue No. 1 was treated as preliminary issue as per the request of both the parties. Both the parties submitted that they did not want to lead any evidence on the said issue. The parties filed written statements which are on record. I have gone through the pleadings of the parties as also the written arguments filed by them. My findings on the issues are as under:

Issue No. 1 In the negative.
Issue No. 2 Does not arise.
Issue No. 3 In the negative.
Issue No. 4 As per para. 6.
Issue No. 5 As per order below.

REASONS

5. *Issue Nos. 1, 2 and 3.* It is not disputed that the 18 workmen named in the reference were in employment of the employer M/s Novem Goem Pratishthan. It is also not in dispute that the termination of the services of the workmen was effected from 16-6-1988. The workmen themselves have stated in para. 3 (b) of their statement of claim that on 16-6-88 the employer told them not to report for work because the employer had suspended the operation of publication of the newspaper. The employer however, in its written statement

stated that the operation of the publication of the daily newspaper was not suspended but was closed down due to financial crisis. There is no evidence on record to show that subsequent to 16-6-88 the employer resumed the operation of publication of the daily newspaper 'Novem Goem' or that the daily 'Novem Goem' was being published at the same place or at some other place. Therefore, it goes to establish that the closure was effected by the employer w.e.f., 16-6-88. Now, the question that arises is whether the closure is legal and proper. The workmen have contended that even if it is assumed that the daily newspaper of the employer was closed down, since no notice was given to the workmen before the closure was effected and also no retrenchment compensation was paid the closure is illegal. The workmen have also denied that the employer was in financial crisis so as to close down the operation of the publication of the daily newspaper. As I have said earlier, there is no evidence on record either oral or documentary that after the termination of the services of the workmen on 16-6-88 the employer employed other persons or that the employer published the daily newspaper, 'Novem Goem'. This evidence had to be brought in by the workmen. Therefore, it is a matter of fact that the operation of the publication of the daily. Novem Goem was closed down by the employer w.e.f., 16-6-88. The Supreme Court in the case of M/s Indian Fume Pipe Company Ltd., V/s Their workmen reported in AIR 1968 S.C. 1002 has held that once the Tribunal finds that the employer has closed his factory as a matter of fact, it is not concerned to go into the question as to the motive which guided him to close the factory. In another case i.e. in the case of M/s Tatanagar Foundary Company Ltd., v/s their workmen reported in AIR 1970 S.C. 1960, the Supreme Court has held that motive of closure is immaterial and what is to be seen is whether the closure is an effective one. Therefore, applying the principles laid down by the Supreme Court in the above cases, once it is established that the closure was become effective it is immaterial whether the closure is on account of financial crisis or otherwise. Therefore, the contention of the workmen that the employer was not in financial crisis so as to close down the operation of publication of the daily and that therefore the closure is illegal and not proper is without any substance. The other contention of the workmen is that the closure is illegal because no notice of closure was given to them by the employer nor any retrenchment compensation was paid prior to termination of their services. I do not agree with this contention of the workmen. In the case of retrenchment, unless prior conditions as laid down in Sec. 25F of the I. D . Act are complied with, retrenchment is illegal. However, retrenchment is not the same as closure. The Supreme Court in the case of Santosh Gupta v/s State Bank of Patiala reported in AIR 1980 S. C. 1219 has held that the termination of the services of the workmen as a consequence of closure is to be treated as retrenchment for the purpose of notice, compensation etc. This means that it is treated as retrenchment only for the purpose of notice and payment of compensation as per Sec. 25F of the I. D. Act. The Supreme Court in another case in the case of M/s. Avon Services Production Agency Pvt. Ltd., reported in AIR 1979 SC 170 has held that giving of notice and payment of compensation as provided in Sec, 25F of the I. D. Act, is not a condition precedent in case of closure as otherwise it is in the case of retrenchment. This being the position the contention of the workmen that because no prior notice or retrenchment compensation was paid the closure is illegal, also fails, I, therefore hold that the workmen have failed to prove that the closure of business by the employer was not legal and proper and hence answer the issue No. 1 in the negative. Once it is held that the closure is legal and proper the question whether the act of the employer in refusing employment to the workers amounts to retrenchment in law or not does not arise. Hence the issue No. 2 is answered accordingly. A regards the issue No. 3 the termination of the services of the workmen is not on account of refusal of employment to the workers but it is on account of closure of the operation of the publication of the daily, 'Novem Goem'. Since the closure has become effective w. e. f. 16-6-88 as held by me earlier, the termination of the services of the workmen which is on account of closure is legal and proper. I, therefore, answer the issue No. 3 in the nagative.

6. *Issue No. 4:*— The employer in his written statement has contended that the operation of the publication of the daily newspaper, 'Novem Goem' was closed down due to financial difficulties of the employer. Therefore, the case of the workmen squarely falls within the provision of sec. 25-FFF(1) of the Industrial Disputes Act which provides for payment of compensation to the workmen in case of closing down of undertakings. As per the said Section in case of closure of an undertaking, the workman is entitled to notice and compensation in accordance with the provision of Sec. 25F of the I. D. Act as if the workman had been retrenched. Sec. 25F provides for giving one month's notice in writing to the workman or in lieu of such notice, payment of wages for the period of notice and also payment of compensation which shall be equal of 15 days average pay for every completed year of continous services or any part thereof in excess of 6 months. Now, the employer has admitted that no notice was given to the workmen nor they were paid one month's wages in lieu of notice nor they were paid any compensation. The Supreme Court in the case of Workmen of indian Leaf Tobacco Development Company Ltd., reported in AIR 1970 SC 860 has held that when the closure is genuine and real the workmen who have been retrenched due to such closure are entitled to retrenchment compensation only and cannot claim any re-employment or reinstatement. The workmen in their statement of claim besides claiming wages in lieu of one month's notice and retrenchment compensation have claimed gratuity, relief and wages in lieu of leave balance. Granting relief or gratuity or wages in lieu of leave balance would be beyond the scope or terms of reference and therefore the same reliefs cannot be granted. Besides, since the termination of the services of the workmen is on account of closure the workmen are entitled to compensation as provided in Sec 25F of the Industrial Disputes Act, which does not provide for payment of gratuity or wages in lieu of leave balance. I, therefore, disallow the claim of the workmen for gratuity and wages in lieu of leave balance. The workmen in annexure 'A' annexed to the statement of claim have given the date of joining and wages drawn as on 16-6-88 against each workman which is not disputed by the employer in his written statement. From the said annexure it can be seen that each of the workman has been in continuous service for not less than one year immediately before the closure and therefore the workman are entitle to compensation as per sec. 25. FFF of the I. D. Act, 1947. In the circumstances, I hold that the workmen are entitled to the compensation being wages in lieu of one month's notice and 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months.

Considering all the aspects of the case, I hold that the termination of the services of the 18 workmen named in the

reference is not on account of the refusal of employment upon suspension of operation by the management of M/s. Novem Goem Pratishthan, Margao, Goa, but it is consequent upon the closure of the operation of publication and hence I pass the following order:

ORDER

It is hereby held that the termination of services of the 18 workmen named in the reference is not on account of refusal of employment consequent upon the suspension of operation but is consequent upon the closure of the operation by the management of M/s Novem Goem Pratishthan, Margao, Goa. The management of M/s Novem Goem Pratishthan, Margao Goa, shall pay to the 18 workmen named in the reference wages in lieu of one month's notice and 15 days average pay for every completed year of continuous service or any part thereof in excess of six months as provided under Sec 25F of the Industrial Disputes Act, 1947

There shall be no order as to costs. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI)
Presiding Officer
Industrial Tribunal

Order

No. 28/MISC/AWARDS/93-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

F. O. D'Costa, Under Secretary (Labour).

Panaji, 5th July, 1995.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/79/89

Shri Gopal K. More,
Nerul, Bardez-Goa — Workman/Party I

V/s.

The Principal,
St. Anthony's High School,
Monte de Guirim,
Bardez - Goa. — Employer/Party II

Party I represented by Shri N. J. Rebello.

Party II represented by Shri A. F. D'Souza, Advocate.

Panaji, Dated: 5-5-1995.

AWARD

In exercise of the powers conferred by clause (d) of Sub. Section (1) of Section 10 of the Industrial Disputes Act, (Central Act 14 of 1947) the Government of Goa by order dated 26th October, 1989 bearing No. 28/53/89-LAB referred the following issue for adjudication by this Tribunal.

"Whether the action of the management of St. Anthony's High School, Monte-de-Guirim, Bardez-Goa, in terminating the services of Shri Gopal K. More, with effect from 25th August, 1988 is legal and justified.

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/79/89 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Party I (For short, 'Workman') was represented by Shri N. J. Rebello and the Party II (For short, 'Employer') was represented by Adv. A. F. D'Sousa. The workman filed statement of claim at Exb. 2. The facts of the case in brief as pleaded by the workman in his statement of claim are that he joined the services of the employer in the month of March, 1974 as a Carpenter on daily wages and worked with the employer for a period of about 14 years. That on 15th August, 1988 the Principal of St. Anthony's High School, the emplyer, told the workman not to report for duties from 15.8.88 and no reasons were assigned for the same. The workman approached management of the employer on several occasions requesting that he should be allowed to work but his request was not granted by the management. That the workman thereafter wrote a letter dated 20-9-88 to the employer to reconsider his case as his termination from services according to him was illegal, unjust and amounted to unfair labour practice. The workman also brought to the notice of the employer that no notice was given to him prior to termination of his services nor any enquiry was held against him in case there was misconduct on his part, nor any compensation was paid to him. The workman contended that at the time of termination of his services he was being paid Rs. 1000/- p.m. approximately as salary. The workman therefore called upon the employer to reinstate him with full back wages and continuity in service. The employer however, did not reply to the said letter till 16th Jan., 1989. Thereafter conciliation proceedings were held before the Asst. Labour Commissioner which resulted in failure. The contention of the workman is that since the employer did not give any notice to him prior to termination of his services nor paid any compensation as required u/s 25-F of the Industrial Disputes Act, 1947, the termination of his services by the employer is illegal, unjustified and bad in law.

3. The employer filed a written statement at Exb. 3. The employer denied that the workman was employed as a Carpenter from March, 1974 and stated that the workman sometimes executed works on contract basis as and when the work was available and he was paid his agreed amount on completion of the work. The employer stated that when the workman executed the work of the emloyer he also took up carpentary work for others and that the workman executed most of the work at his house and did the fitting/furnishing work at school. The employer denied that the workman was employed as an

employee or workman or that monthly wages of Rs. 1000/- p. m. was paid to him. The employer therefore contended that there was no termination of services of the workman as claimed by him and therefore he was not entitled to any relief claimed by him. The employer further contended that there was no industrial dispute which was existing and the provisions of the I. D. Act, 1947 were not attracted. The employer stated that since the workman was not executing the work satisfactorily and was also charging exhorbitantly for the contract work, the employer assigned the work to some other person. The employer denied that the workman approached the management of the employer several times requesting for reinstating him. The employer also denied that the workman was entitled to retrenchment compensation or notice or wages in lieu of notice as per Sec. 25-F of the Industrial Disputes Act, 1947. The employer contended that the claim of the workman was dishonest, illegal, and not maintainable under the law. The workman thereafter filed a rejoinder at Exb. 4 reiterating what was stated by him in the statement of claim.

4. On the pleadings of the parties following issues were framed at Exb. 5.

1. Whether the Party I, Shri Gopal K. More worked with the Party II/School as a full time carpenter on a salary of Rs. 1000/- approximately since March, 1974 as contended by him?

2. Whether the Pary II/School proves that the said G. K. More was occasionally engaged by them in executing some of the carpentary work of the School/Priary on contract basis and no relationship of employer-employee existed between them as contended in para. 3 of the written statement?

3. If the Party I, G. K. More is proved to be in continuous service from March, 1974 whether the management of party II summarily terminated his services by the oral order of the Principal on 14-8-1980 as alleged in para. 1 of the claim statement?

4. If so, whether the summary termination of the services of party I in this fashion is against the provisions of I. D. Act, and whether the termination from services is just and legal in the cirumstances of the case?

5. If not, to what reliefs is the workman entitled to?

5. My answers to the said issues is as under:

1. In the negative.
2. In the affirmative.
3. In the negative.
4. Does not arise.
5. The workman is not entitled to any relief.

REASONS

6. *Issue no. 1*: Both the parties have filed written arguments in support of their various contentions. I have considered the said written arguments. Since it is the case of the workman that he was employed with the employer as a Carpenter since March, 1974 on daily wages and that he worked as a full time Carpenter from 9.00 a.m. to 1.00 p.m. and from 2.00 p.m. to 6.00 p.m. and that his last drawn salary was Rs. 1000/- p.m. approx., which is denied by the employer, the burden was on the workman to prove the above contention. The workman has examined himself and one Mr. Mahadev Satardekar in support of his case. Except for the statement of the workman that he was employed as a Carpenter since March, 1974 on daily wages and that he was working as a full time Carpenter from 9.00 a.m. to 1.00 p.m. and 2.00 p. m. to 6.00 p.m. and that his last drawn salary was Rs. one thousand approx. per month, there is no other evidence on record to support the above contention of the workman. The workman has not produced any letter of appointment or any other document to prove that he was appointed from March, 1974 or that his last drawn salary was Rs. one thousand P. M., approx. The deposition of Mr. Mahadev Satardekar, the witness examined by the workman in support of his case is of no help to him. The said witness has not corroborated the statement of the workman. It is the case of the workman that he was working with the employer from March, 1974. However, the witness Mr. Satardekar has stated in his deposition that he was working together with the workman since the last 10 years. His deposition was recorded on 6th July, 1991. That means according to the said witness the workman was working with the employer since the year 1981 and not since 1974 as contended by the workman. The workman has submitted in his written arguments that his case is supported by the witness Mr. Satardekar. I do not agree with this submission of the workman. The said witness has deposed mostly relating to himself rather than relating to the workman except for a statement that the workman was working along with him, since the last 10 years. In his cross examination he has stated that he does not know what talks took place between the workman and the Priest before the workman was given to him. On the important aspects of the matter such as the payment of the amount to the workman towards the work executed by him or that he was employed on contract basis or whether there were fixed timings for the workman or whether the workman was doing the work at home he has said that he does not know about it. If it is taken that the said witness was along working with the workman with the employer, the said witness would have been in a position to give answers on the above aspects of the matter. Therefore one fails to understand as to how and in what manner the witness Mr. Satardekar has supported the case of the workman. The authorities relied upon by the workman are not applicable and have no bearing on the facts of the present case. The workman in his cross examination has admitted that he has no documentary evidence to prove that his last pay was Rs. 1000 p.m. approx. In the circumstances. I hold that the workman has failed to prove that he worked with the employer as a full time Carpenter on salary of Rs. 1000/- p.m. approximately since March, 1974 and hence I answer the issue No. 1 in the negative.

7. *Issue No. 2:* The employer has denied that the workman was employed since March, 1974 and that his last drawn salary was Rs. 1000/- p. m. approximately. The employer has contended that the workman executed work for the employer on contract basis whenever work was available and he was paid his agreed amount on completion of work. The employer has also contended that the workman executed most of the work at his house and did the fitting and furnishing work at school. The employer has denied that the workman was its employee

or workman the meaning of Sec. 2(s) of the Industrial Disputes Act, thereby denying the relationship of employer-employee between them and contended that there was no industrial dispute which was existing and hence the provisions of the I. D. Act, 1947 were not attracted. The contention of the employer is that there is no termination of the services of the workman but the work was assigned to some other person because the workman was not executing the work satisfactorily and also was charging exhorbitantly for the contract work. In support of its contention that the workman executed the work on contract basis and that agreed amount was paid to him on completion of the work, the employer has produced receipts Exb. 11 (colly). The workman has admitted the issuing of the said receipts by him and has further admitted that he used to pass the receipts after he was paid from time to time. These receipts support the contention of the employer that the workman was executing the work on contract basis and that he was being paid as per the agreed amount. The said receipts show that the workman was paid as per the work executed by him and that he was not in regular employment of the employer. The said receipts also show that the workman was paid after he had completed the work entrusted to him. The last receipt which has been produced is dated 5-3-88 for an amount of Rs. 105. According to the workman his services were terminated w.e.f., 15-8-88 and his last drawn salary was Rs. 1000/- p.m. approx. If the workman was paid Rs. 1000/- p.m. approx. by way of salary as per the contention of the workman himself, one fails to understand as to how is that he has issued receipts for different amounts as per the work done by him from time to time and some of the receipts show that on some occasions, the workman was paid much more than the amount of Rs. 1000/- i.e sometimes Rs. 1875/- and sometimes a little less than that. No explanation whatsoever has come forward from the workman in this respect. Further, according to the workman his last drawn salary was Rs. 1000/- p. m. approx. i. e. at the time when his services are alleged to have been terminated w.e.f. 15-8-88 how is that on 18-7-78 he was paid Rs. 1875/- and Rs. 1574.50 on 10.8.78. The workman in his statement of claim stated that he joined the services of the employer in March, 1974 on daily wages. However, there is no no reference to this fact in his deposition nor he had any time stated what was the amount that was being paid to him towards his daily wages. On the other hand, the witness of the workman Shri Satardekar, in his deposition has stated that he was paid Rs. 15 per day and subsequently the amount was increased to Rs. 25 per day as daily wages. This relevant piece of evidence is missing in the deposition of the workman. The said witness has not stated that the workman was also being paid daily wages along with him or that he was paid particular amount as daily wages. On the contrary in his cross examination he has stated that he does not know if the workman was paid on contract basis. He has also stated that he does not know whether the workman used to take work at home. If the said witness and the workman were working together as stated by the said witness in his examination in chief, then he would have definately denied that the workman is paid on contract basis or that he used to take the work at home and not just stated that he does not know anything about the same. The letters Exb. 8 & 9 and the failure report Exb. 10 produced by the workman are not of any help to the workman. The letters Exb. 8 & 9 and the failure report Exb. 10 do not prove that the workman was in employment of the employer or that he was employed on daily wages or on payment of Rs. 1000/- p. m. approx. by way of salary.

The employer has denied that there was any employer-employee relationship between the employer and the workman. The employer has therefore contended that no industrial dispute existed. Section 10 of the I. D. Act, 1947 refers to the refering of only industial disputes to the Tribunal for adjudication and not any other dispute. Section 2 (k) of the I. D. Act, 1947 defines 'Industrial Dispute' as under:

> "Industrial Dispute" means any dispute or difference between Employers and employees or between Employers and Workmen or between workmen and workmen which is connected with employment or non-employment or the terms of employment or with the conditions of labour of any person."

From the above definition, it is evident that only those disputes are contemplated as industrial disputes which bear upon the relationship of the employer and the workman. It, therefore follows that to determine whether a difference or dispute is an industrial dispute or not, the first thing to determine is whether the workman concerned falls within the ambit and scope of Sec. 2 (s) of the Industrial Disputes Act or not. Sec. 2 (s) of the Act, defines 'workman'. The Supreme Court in the case of workman of the Food Corporation of India v/s M/s. Food Corporation of India reported in AIR 1985 S. C. 670 has held that there must be a previty of contract of employer and workman. The Supreme Court has further held that the word "Employed" in the definition of "Workman" is used in the sense of relationship brought about by express or implied contract of service in which the employer renders services for which he is engaged by the employer and the letter agrees to pay him in cash or in kind as agreed between them or statutorily prescribed. It dicloses a relationship of command and obedience. In the said decision the Supreme Court has further laid down the essential conditons of a person being a workman within the terms such as, (i) he should be employed to do the work in the industry, (ii) There should be an employment of his by employer and (iii) there should be relationship of employer and employee or master and servant. The decision of the Supreme Court in the case of Dharangadhara Chemicals Works Ltd. v/s State of Saurashtra reported in 1957 SCR 152 (AIR 1957 SC 264) and in the case of Chintamanrao and another v/s State of Madhya Pradesh reported in AIR 1958 SC 388 relied upon by the employer also lays down the same principles as laid down in the case of Workmen of M/s Food Corporation of India (Supra). The Supreme Court in the case of Dharangadhara Chemical Works Ltd., (Supra) has held that the prima facie test for the determination of the relationship between master and servant is the existence of right in the matters to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work. The basic condition laid down by the Supreme Court in the above cases to find out whether a person is a workman within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947 or not, is missing in the present case. The workman does not ful-fill any of the conditions or test laid down by the Supreme Court. The Supreme Court in the case of Chintamanirao and anr., (Supra) has held that a contractor is a person who in the pursuit of an independent business, undertakes to do specific jobs of work for other persons, without submitting himself to their control in respect to the details of the work and thus there is clear-cut distinction between a contractor and a workman.There is no evidence in

the present case which shows that there was supervision or control over the work done by the workman in the matter of directing what work the workman was supposed to do and also the manner in which he was supposed to do the said work. In the cirumstances, I hold that the employer has succeeded in proving that the workman was engaged to execute the work on contract basis and no relationship of employer-employee existed between the employer and the workman and hence no industrial dispute existed before the Government so as to make the reference. I, therefore, answer the issue in the negative.

8. *Issue No. 3:* While discussing the issue no. 1 and 2, I have held that the workman has failed to prove that he worked with the employer as a full time Carpenter on salary of Rs. 1000/- p. m. approx. or that he was employed since March, 1974. I have also held that the employer has succeded in proving that the workman was engaged by the employer to execute the work on contract basis and the relationship of employer-employee did not exist between the employer and the workman. This being the case there is no termination of the services of the workman by the management of the employer w.e.f. 15-8-88 as alleged by the workman in his statement of claim. In the circumstances, I hold that the workman was not in continuous service of the employer from March, 1974 and there is also no termination of services of the workman by the management of the employer w.e.f. 15-8-88 as claimed by the workman. Hence I answer this issue no. 3 in the negative.

9. *Issue Nos. 4 & 5:* While discussing the issue no. 2, I have held that the workman was engaged by the employer to execute the work on contract basis. I have further held that there was no employer-employee relationship between the employer and the workman and consequently there was no industrial dispute existing at the time when the reference was made by the Governmeat. In view of this matter of the case, the provisions of the Induatrial Disputes Act, 1947 are not attracted to the present case. I have also held while deciding the issue no. 3 that there is no termination of the services of the workman by the management of the employer. This being the case, the question of deciding whether the termination of the workman from service is just and legal does not arise in the circumstances of the case. Consequently, the workman is not entitled to any relief and hence I answer the issue nos. 4 & 5 accordingly.

In the circumstances, I pass the following order.

ORDER

It is hereby held that there is no termination of the services of Shri Gopal K. More by the management of St. Anthony's High School, Monte-de-Guirim, Goa, w.e.f. 25-8-1988. It is further held that there is no employer-employee relationship between the management of St. Anthony's High School and the Shri Gopal K. More and hence no industrial dispute existed before the Government. The reference is therefore held to be not maintainable and hence rejected.

No order as to costs. Inform the Government accordingly.

Sd/-

(AJIT J. AGNI)
Presiding Officer
Industrial Tribunal.

Order

No.28/9/90-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

F. O. D'Costa, Under Secretary (Labour).

Panaji, 5th July, 1995.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/50/90.

Goa Municipal Workers' Union,
Panaji-Goa. — Party I

v/s

M/s. Mormugao Municipal Council,
Vasco-da-Gama, Goa. — Party II

Party I/Union represented by Adv. C. J. Mane.
Party II/Employer represented by Adv. E. O. Mendes.

Panaji, Dated: 9/6/1995.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa, by order dated 19th October, 1990 bearing No.28/9/90-Lab referred the following dispute for adjudication by this Tribunal.

> "Whether the contention of Goa Municipal Workers Union that Shri Michael F. D'Souza was deprived of his seniority whilst being promoted to the post of Head Clerk, and was also victimised and harassed by posting him in Store and maintainance Section vide Order No.MMC/Adm/1-4(5)/88-89/925 dated 13th June, 1988. is legal and justified?
>
> If so, to what relief the above workman is entitled?"

2. On receipt of the reference a case was registered under No.IT/50/90 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Party I (for short."Union") filed the statement of claim which is at Exb 4. The facts of the case in brief as pleaded in the statement of claim are that Shri Michael D'Souza (for short, "Workman") is working with the Party II (for short,"Employer") as a Head Clerk in Stores and Maintainance

Section and initially he was appointed as a Steno-typist in the grade of U.D.C., on basic pay of Rs.130/- per month in the pay scale of Rs. 130-5-180-8-200-EB-8-256-EB-280-10-300. By order dated 12-6-81 the employer confirmed the workman in service. That the Employer in its meeting held on 27-7-77 took the decision regarding promotion of U.D.C., namely the workmen, Shri Vasant Naik and one Smt. Carmela Lobo as Head Clerk and also filling of the post of Accountant by promotion of U.D.C./ Cashier Shri Premanand Naik. That the workman apprehending that the promotion would be made by favouritism and not according to the Recruitment Rules, made a representation to the employer who by reply dated 25-7-77 assured the workman that the promotion would be made as per the existing Recruitment Rules. That as per the Recruitment Rules the post of the Head Clerk is to be filled by promotions of U.D.C./Jr. Stenographer having atleast 3 years standing in the grade as specified in the column 11 of the schedule. That in violation of the Recruitment Rules the employer promoted some unqualified and ineligible U.D.C. as Head Clerk. That Smt. Carmela Lobo who did not satisfy the minimum qualification for the post of L.D.C., was placed at serial no.3 in the seniority list of the U.D.C., which according to the workman is if so facto, illegal and void. That similarly, Shri Vasant Naik, the U.D.C./Store Keeper was not eligible for promotion as Head Clerk as he did not qualify for the same post as per the Recruitment Rules and hence his promotion as Head Clerk is if so facto invalid. That also, the promotion of Shri Premanand Naik to the post of Accountant is invalid as according to the workman the said Premanand Naik did not satisfy the minimum qualification as required under the Recruitment Rules. That the employer circulated a seniority list of the staff of the employer as on 31-3-90 and as per the said list in the seniority list of the Head Clerks the name of the workman figured at serial No. 3. The contention of the workman is that the persons showed at sr. nos. 1 and 2 were not eligible for inclusions in the seniority list of the Head Clerks and hence their names ought to be deleted and the name of the workman ought to figure at Sr.No.1 with appointement dated as on 31-8-77. That the workman made several representations to the employer bringing to its notice the irregularities committed in promotion of the Head Clerk and other appointments. The Employer did not reply to the said representations and on the contrary harassed the workman by transfering him from one place to another very often. That during the period 1-2-85 to 13-6-88 the workman was transferred at 6 different places as against the normal practice of transfering an employee only after he has worked at a place continuously for 3 years. The Union therefore claimed that the workman is entitled to be placed at serial no. 1 in the seniority list of Head Clerks with his appointment date as 31-8-77 besides other reliefs as claimed in the statement of claim.

3. The employer filed a written statement which is at Exb. 8. by way of preliminary objection the employer stated that the reference is bad in law as the dispute raised is an individual dispute and not an industrial dispute as contemplated u/s 2K of the Industrial Disputes Act, 1947. On the merits of the case, the employer stated that the promotions to the post were made following the proper procedure and the Recruitment Rules framed from time to time. The employer denied that any irregularities were committed whilst filling up the post of Head Clerks and stated that the workman was promoted in the year 1985 when a fresh post was created and he was asked to look after the ministerial work in the Municipal Garage. The Employer also denied that the workman was transferred from place to place by way of harassment as allegad by the workman and stated that he was transferred to the Admn. Section as per his own request. The Employer stated that the statement of claim filed was malafide and without any basis. The Employer therefore denied that the workman was entitled to any of the reliefs claimed by him. Thereafer, a rejoinder was filed which is at Exb. 9 controverting the pleadings made by the employer in the written statement.

4. After the issues were framed and parties led evidence, the Union filed an application which is at Exb. 35 seeking to amend the case title of the statement of claim by substituting the name, " Shri Michael F. D'Souza-Party I" with " Goa Municipal Workers Union-Party I". My learned Predecessor allowed the said amendment and consequently the cause title was amended accordingly. Thereafter, the employer filed additional written statement and additional issues were framed at Exb.40. The parties however submitted that they did not wish to lead any further evidence on the additional issues.

5. The issues framed on the pleadings of the parties are as follows:

ISSUES

1. Does Party I-Workman prove that the order of promotions were in violation of Recruitment Rules as alleged?
2. If yes, is Party I- Workman entitled to be placed at serial No. 1 in the seniority list of head clerks?
3. If yes, is he entitled to any monetary benefits?
4. Does Party II, prove that the grievances made by Party I are not industrial disputes and hence this reference is not competent?
5. Is Party I entitled to claim for setting aside the order of transfer dated 13-5-1988 (Exb.w/3)?
6. Does the Party II/Employer proves that the post of Head Clerk is a selection post to be filled up by conducting written and oral test?
7. Does the Party II/Employer prove that as per the merit list prepared by the selection committee, the workman Shri Michael D'Souza was pleased at Serial no. 3 and he was promoted as Head Clerk only when the vacancy arose in 1985?
8. To what reliefs, if any, is Party I-Workman entitled to?
9. What award or order?

My findings on the issues are as under:

Issue No. 1 - Does not arise.
Issue No. 2 - Does not arise.
Issue No. 3 - Does not arise.
Issue No. 4 - In the affirmative.
Issue No. 5 - Does not arise.
Issue No. 6 - Does not arise.

Issue No. 7 - Does not arise.
Issue No. 8 - In the negative.
Issue No. 9 - As per the order below.

REASONS

Since the issue no.4 is as regards the maintenability of the reference itself, I propose to decide the said issue first.

6. *Issue No.4:-* The parties have filed written arguments which are on record and I have considered the said arguments. Besides filing written arguments the parties also advanced oral arguments. Adv.C. J. Mane representing the Union submitted that an individual dispute can be an industrial dispute as defined u/s 2(K) of the Industrial Disputes Act,1947 if it is taken up by the Union or by a number of workmen. He submitted that the workman is a member of an union and since his dispute is espoused by the Union, the individuel dispute has taken the character of an industrial dispute and hence the reference is maintanable. In this respect, Adv. Mane relied upon a decision of Supreme Court in the case of News Paper Ltd., v/s Industrial Tribunal. Uttar Pradesh, reported in 1957 II LLJ page 1, and in the case Central Provinces Transport Services Ltd., v/s Ragunath Gopal Patwardhan reported in AIR 1957 S.C104. He further submitted that when the dispute was admitted in conciliation before the Dy. Labour Commissioner, the employer never challenged the authority of the Union nor contended that there is no industrial dispute. Adv. Mane submitted that the workman by letter of authority dated 14-12-90 produced before this court had authorised the Vice President and the General Secretary of the Union to represent him in the reference. He therefore submitted that the reference was maintainable and the objection raised by the employer was without any substance. Adv. Mendes representing the employer on the other hand submitted that the objection to the maintainability of the reference was already taken at the earliest opportunity i.e. when the written statement was filed by raising the preliminary objection and the union had sufficient opportunity to prove that it had the support of sufficient number of its members to espouse the dispute of the workman. However, according to him, no evidence whatsoever was produced by the union. He submitted that it cannot be said that the dispute is raised by the union because the statement of claim and the rejoinder is signed by the workman himself in his individual capacity and the same is not signed by any of the committee members of the Union. According to Adv. Mendes, the dispute does not fall within the scope and ambit of Sec. 2-K or Sec. 2-A of the I.D.A., 1947 and hence there is no industrial dispute. He submitted that inorder that an individual dispute can become an industrial dispute, it should be espoused by a sufficient number of workmen or by a Union with due authority. In this respect he relied upon the decisions reported in 1957 I LLJ 27 and 1970 II LLJ 256.

I have carefully considered the arguments advanced by both the learned Counsels. The contention of the employer is that the dispute referred by the Government is not an industrial dispute but is an individual dispute because it is not espoused by a substantial number of workmen or by the Union having support of substantial number of work its members. It is true that unless there is an industrial dispute, no reference can be made by the Government. Industrial Dispute envisages a collective dispute. However, after the introduction of Section 2-A, an individual dispute was deemed to be an industrial dispute within the meaning of the Act. Section 2-A contemplates individual dispute as industrial dispute when a workman is discharged, dismissed, retrenched or his services are otherwise terminated by the employer. The dispute involved in the present case does not fall within the scope of Sec.2-A of the Act, as the dispute raised by the Union is as regards depriving the workman of his seniority whilst being promoted to the post of Head Clerk and also as regards victimising and harrassing the workman by posting him in Stores and Maintainance Section. The contention of the Union is that though the dispute involved is an individual dispute it has become an industrial dispute because it is espoused by the union. The union has relied upon the decision of the Supreme Court in the case of News Paper Ltd., (Supra) and Central Provinces Transport Services Ltd. (Supra) in support of his contention that the individual dispute takes the character of industrial dispute if it is espoused by the union or if it is supported by a substantial number of workmen. I have gone through the said decisions of the Supreme Court and I agree with this contention of the Union. The employer has also relied upon the decision of the Supreme Court in the case of Central Provinces Transport Services Ltd., V/s Ragunath Gopal Patwardhan reported in 1957 I LLJ 27 and in the case of M/s Western India Match Company Ltd., V/s The Western India Match Company Workers Union reported in 1970 II LLJ 256 in support of its contention that the dispute referred is not an industrial dispute but an individual dispute. In the above decisions also, the Supreme Court has laid down the law that inorder that an individual dispute be considered as an industrial dispute it should be supported by a substantial number of workmen or should be espoused by an Union. In the case of Central Provinces Transport Services Ltd., (Supra) the Supreme Court has held that the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion to settle only disputes which involves the rights of the workman as a class and that a dispute touching the individial right of a workman was not intended to be the object of an adjudication under the Act, when the same had not been taken up by the Union or a number of workmen. The above principle laid down by the Supreme Court in various decisions have been followed by Madras High Court in the case of Nellal Cotton Mills Tiruneleali v/s Labour Court, Madurai reported in 1963 I LLJ, 95 and by the Calcutta High Court in the case of Deepak Industries Ltd., and another v/s State of West Bengal and another reported in 1975 LAB.I.C., 1153. The gist of the above decisions is that if an industrial dispute is raised by an individual, it must be raised by him. But, if the dispute is espoused or sponsored by an Union and the authority of the Union is challenged by the employer, it must be proved by production of material evidence before the Tribunal that the Union has been duly authorised either by a resolution of its members or otherwise, that it has the authority to represent the workman whose cause it is espousing. This is because in the case of an individual dispute the other workers may or may not be interested in espousing his dispute. The Calcutta High Court in the case of Deepak Industries Ltd. (Supra) has held as follows:

"When the authority of the Union is challenged by the Employer it must be proved by production of material

evidence before the Tribunal to which such a dispute has been referred that the union has been duly authorised either by a resolution of its members or otherwise that it has the authority to represent the workman whose cause it is espousing. Mere fact that the said union is registered under the Indian Trade Unions's Act is not a conclusive proof of its real existance or the authority to represent the workman before the Tribunal. Mere negotiations by some officials of the Union with the employers for conciliation or executing certain documents on behalf of the workman prior to the reference are not the conclusive proof of the authority of the Union to represent the workman whose dispute it is alleged to be espousing before the Tribunal. It is immaterial whether the said Union is a general union of the workmen of appropriate industry or it is an union of the appropriate establishment relating to which the dispute has arisen between it and its workmen. In each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute the test is whether at the date of the reference the dispute was taken up or supported by the Union or the workman of the employer against whom the dispute is raised by the individual or by a appreciable number of workmen."

It has been further held by the High Court that in order that a dispute between a single employee and his employer should be validly referred under Section 10, it is necessary that it should have been taken up by the union to which the employee belongs or by a number of employees. The above decision of the Calcutta High Court is based on the principles laid down by the Supreme Court in the case reported in AIR 1963 S.C. 318. I agree with the said decision of the Calcutta High Court. The employer in its written statement had raised the objection that the dispute which is raised is individual dispute and not an industrial dispute as contemplated u/s 2-K of the Industrial Disputes Act, 1947 and hence the reference is bad in law. In the rejoinder - Exb.9, The union had taken the stand that since the dispute was espoused by it, of which the workman is a member, the individual dispute of the workman acquired the character of an industrial dispute. Applying the above principles laid down by the Supreme Court and the High Courts and in particular the principles laid down by the Calcutta High Court in the case of Deepak Industries Ltd. (Supra), since the authority of the union was challenged by the employer it was incumbent upon the Union to produce material evidence before this Tribunal that it has been duly authorised by a resolution of its members or otherwise to represent the workman whose cause it is espousing. This authority should be existing on the date when the reference is made by the Government and not after the reference is made. The Union has sought to argue that the workman has given letter of authority dated 14-12-90 in favour of Shri V. Gaitonde, the vice President of the Union and Shri G. A. P. Mhambre, the General Secretary of the Union to represent him in the above case in this Tribunal. However, this letter of authority is of no help to the Union as the date of reference is 19-10-90 and the letter of authority is dated 14-12-90. As I have said earlier the authority should be existing on the date when the reference is made by the Government and not after the reference is made. It is also pertinent to note that even though the notice of the hearing was served on the union, the statement of claim and the rejoinder was signed by the workman himself and not by any office bearer of the union. No evidence whatsoever has been produced by the Union to prove that it was duly authorised to espouse the dispute of the workman. Also, the Union has not examined any of the office bearers of the Union in support of its contention that it has the authority to espouse the cause of the workman. Infact, the union has not produced the material part of the evidence to show that the workman is the member of the said union. This basic piece of evidence is missing. Therefore, it cannot be held that the Union had the authority to espouse the cause of the workman or that it had the support of substantial number of workmen of the establishment. It, therefore, follows that the dispute referred is an individual dispute of the workman and it does not partake the character of an industrial dispute as contemplated u/s 2-K of the Indstrial Disputes Act. 1947. This being the case, the reference is bad in law as under the industrial law, the Government is entitled to make the reference only of an industrial dispute and not an individual dispute unless the dispute fall within the provisions of sec. 2-A of the Industrial Disputes Act. However, as I have said earlier the present dispute does not fall within the provisions of sec. 2-A of the Industrial Disputes Act and therefore the reference is not maintainable and is bad in law. In the circumstances, I hold that the employer has succeeded in proving that there is no industrial dispute and hence the reference is not competent. I, therefore, answer issue no. 4 in the affirmative.

7. Since the reference itself is held by me to be bad in law and not competent, the question of deciding other issues does not arise and also the question of granting any relief to the workman does not arise. I, therefore, answer the remaining issues accordingly.

In the cirumstances, I pass the following order.

ORDER

It is hereby held that no industrial dispute existed at the time when the Government made the reference. It is therefore held that the reference made by the Government is bad in law and hence rejected.

No order as to costs. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI)
Presiding Officer
Industrial Tribunal

Order

No. 28/MISC/AWARDS/93-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

F. O. D'Costa, Under Secretary (Labour).

Panaji, 10th July, 1995.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/45/89

Shri Baptista Dias & Five others.
Rep. by Goa Trade &
Commercial Workers Union. — Workmen/Party I

v/s

M/s Kane Industries,
Navelim, Margao-Goa. — Employer/Party II

Party I-Workmen represented by Adv. Raju Mangueshkar.

Party II-Employer represented by Adv. P. J. Kamat.

Panaji, Dated: 27-6-1995.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act, 14 of 1947) the Government of Goa by order dated 5th July, 1989 bearing No. 28-2-89-ILD referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Kane Industries Margao in terminating the services of Shri Shiva Malpekar, Engine Driver-cum-Helper with effect from 8-7-88 and of the following workmen w.e.f. 21-4-88 is legal and justified:

1. Shri Baptista Dias, Fitter and Blacksmith
2. Shri Balkrishna Naidu, Turner
3. Shri Ganpat Kedar, Moulder
4. Shri Joaquim Vaz, Welder
5. Shri Dina Chari, Fitter end Tin Maker
6. Shri Satya Narayan, Fitter and Welder.

If not, to what relief the workmen are entitled?"

2. On receipt of the reference, a case was registered under No. IT/45/89 and registered A/D notices were issued to the parties. In pursuance to the said notices, parties put in their appearance. The Party I (for short, 'Union') was represented by Adv. Raju Mangueshkar and the Party II for short, 'Employer') was represented by Adv. P. J. Kamat. The Union filed the statement of claim which is at Exb. 2. The facts of the case in brief as pleaded by the Union are that the Employer is a firm having its factory situated at Navelim, Margao, Goa. That Employer is specialised in carrying on the work of crank shaft., regrinders, cylinder boring machinery, welding, casting and head treatment works and also carries on other general work. That Employer employed about 14 workers who were designated as turners, welders, fitters, grinder-operators, line boring, operator, shapper, etc. That though the workmen were in service for more than 15 years they were paid very low wages and were also not given extra benefits. That the workmen thereafter formed an Union and on 21-6-1987 they became the members of Party I-Union. That since thereafter the employer started harassing and victimising the workmen by threatening them, stopping giving of advances to them and charge sheeted some of the workers etc. That thereafter on 1-10-87 the Union submitted charter of demands to the employer and since no settlement was arrived at industrial dispute was raised before the Dy. Labour Commissioner, Margao. That as a part of harassment, the employer retrenched six workers by letter dated 21-4-88 and the retrenchment was to take effect from 21-4-88. The Union thereafter raised industrial dispute in respect of the said six workmen who were retrenched. That since the employer refused to take back the said six workmen, the workers resorted to strike. However, in the meantime the employer terminated the services of another workman by name Shiva Malpekar and dispute in this respect was also raised by the Union. That the strike was thereafter withdrawn by the Union. However, during the pendency of the discussion as regards charter of demands the employer issued a notice of closure dated 15-10-88 stating that the closure would take effect from 15-11-88. That as a result of notice of closure the services of another five workmen were terminated. The Union therefore raised industrial dispute as regards notice of closure which according to the Union was illegal, unjustified and was even with a view to victimise the workmen. That conciliation before the Dy. Labour Commissioner resulted in failure. The contention of the union is that action of the employer in closing its establishment is malafide, unjustified and illegal, that from the date of the closure, the employer employed new workers and they have been working in the factory with the Employer. That the contention of the Employer that its moulding section has been closed as a result of which the workmen have been rendered surplus is absolutely false. That the Employer did not follow the principles of, 'First Come Last Go', nor complied with the provisions of Labour law prior to the termination of the services of the seven workmen named in the reference, by way of retrenchment. The Union also contended that the employer did not pay the retrenchment compensation at the time of terminating the services of the seven workmen named in the reference. The Union therefore contended that the said seven workmen were liable to be reinstated with full back wages and continuity in service.

3. The Employer filed its written statement which is at Exb. 3. The Employer contended that the reference was bad in law and not maintainable and that the workman Shri Shiva Malpekar was retired w.e.f. 8-7-88 on completion of his age of 58 years and therefore his case could not be a subject matter of the dispute. The employer denied that the workman were paid low wages or that they were not given other benefits or that the condition in which they were made to work were miserable. The Employer also denied that workmen were victimised or harassed because they joined the Union. The Employer contended that after the workers joined the Union, indiscipline increased a lot and the workers resorted to, 'go slow' tactics and sudden absentism to pressurise the employer to accept their demands. The Employer stated that its main business was that of repairs of mining machinery and since the business of mining itself was in difficulty there was no enough work at the disposal of the Employer as a result of which the Employer had to close down certain Sections to curtail losses. The Employer stated that it had no work in welding, fitting and moulding Sections and since no further work was also expected, the Employer decided to retrench the workmen in the said Sections and close

them. The Employer contended that the retrenched workmen were paid the retrenchment compensation which was accepted by them. The Employer denied that closure was not legal or justified or that it was by way of victimisation. The Employer also denied that from the date of closure new workers were employed and that the work was carried out in full swing. The Employer denied that the provisions of labour law were violated or were not complied with while terminating the services of the workmen by way of retrenchment. The Employer contended that since the termination of the services of the workman was bonafied, legal and justified, the Union was not entitled to any relief as claimed. Thereafter the Union filed a rejoinder which is at Exb. 4 maintaining what was stated in the statement of claim.

4. On the pleadings of the parties issues were framed at Exb. 5 and the case was posted for recording the evidence of the Union. During the course of the recording of the evidence of the Union, settlement was arrived at in respect of the workmen Shri Joaquim Vaz dated 1-7-92, workman Shri Ganpat Kedar and Shri Dina Chari dated 15-9-92 and the workman Shri Balkrishna Naidu dated 17-5-93 and the said settlements were filed in the Court and it was prayed that consent award be passed in terms of the settlement. Subsequently, the Union and the Employer filed an application dated 15-5-95 Exb. 21 containing the terms of settlement in respect of the remaining 3 workmen namely Shri Baptista Dias, Shri Shiva Malpekar and Shri Satya Narayan and prayed that consent award be passed in terms of the settlement. In the said application Exb. 21, the Employer and the Union admitted about the settlement of the dispute concerning the workmen Shri Ganpat Kedar, Shri Dina Chari, Shri Joaquim Vaz and Shri Balkrishna Naidu and as also to the filing of the terms of the settlement in this Court. I have gone through the terms of the settlement filed in this Court and I am convinced that the settlements are certainly in the interest of the workmen. I, therefore, accept the submissions made by the parties and pass the consent award in terms of the settlement.

ORDER

Terms of settlement dated 1-7-92 in respect of workman Shri Joaquim Vaz.

1. It is agreed between the parties that the Company shall pay a sum of Rs. 4710/- (Rupees four thousand seven hundred and ten only) to Shri Joaquim Vaz towards gratuity, leave encashment, bonus upto 1988-89 etc., etc. in full and final settlement of all his legal dues.

2. It is agreed between the parties that on account of the payment of the amount in clause (i) above, the workman Shri Joaquim Vaz does not press his claim for re-employment and that his dispute with the Company is finally settled.

3. It is agreed between the parties that the workman has no claim of whatsoever nature against the Company.

4. It is agreed between the parties that this settlement shall be filed in the pending reference before the Industrial Tribunal, Panaji in IT/45/89 for a consent Award in terms of this settlement.

5. It is agreed between the parties that the amount agreed shall be paid to Shri Joaquim Vaz on or before 8-7-1992.

Terms of settlement dated 15-9-92 in respect of workman Shri Ganpat Kedar.

1. It is agreed between the parties that the Company shall pay a sum of Rs. 7,608/- (Rupees seven thousand six hundred eight only) to Shri Ganpat Kedar towards Gratuity leave encashment, bonus upto 1988-89 etc, etc. in full and final settlement of all his legal dues.

2. It is agreed between the parties that on account of the payment of the amount in clause (1) above, the workman Shri Ganpat Kedar does not press his claim for re-employment and that his dispute with the Company is finally settled.

3. It is agreed between the parties that the workman has no claim of whatsoever nature against the Company.

4. It is agreed between the parties that this settlement shall be filed in the pending reference before the Industrial Tribunal. Panaji in IT/45/89 for a consent award in terms of this settlement.

5. It is agreed between the parties that the amount agreed shall be paid to Shri Ganpat Kedar on or before 30th Sept., 1992.

Terms of settlement dated 15-9-92 in respect of workman Shri Dina Chari.

1. It is agreed between the parties that the Company shall pay a sum of Rs. 4, 525/- (Rupees four thousand five hundred twenty five only) to Mr. Dina Chari towards gratuity, leave encashment, bonus upto 1988-89 etc., etc. in full and final settlements of all his legal dues.

2. It is agreed between the parties that on account of the payment of the amount in clause (1) above the workman Mr. Dina Chari does not press his claim for re-employment and that his dispute with the Company is finally settled.

3. It is agreed between the parties that the workman has no claim of whatsoever nature against the Company.

4. It is agreed between the parties that this settlement shall be filed in the pending reference before the Industrial Tribunal. Panaji, in IT/45/89 for a consent award in terms of this settlement.

5. It is agreed between the parties that the amount agreed shall be paid to Mr. Dina Chari on or before 30th Sept. 1992.

Terms of settlement dated 17-5-93 in respect of workman Shri Balkrishna Naidu.

1. It is agreed between the parties that the Company shall pay a sum of Rs. 2011/- (Rupees two thousand and eleven only) to Mr. Balkrishna Naidu towards Gratuity, leave encashment, bonus upto 1988-89 etc. in full and final settlement of all his legal dues.

2. It is agreed between the parties that on account of the payment of the amount in clause (1) above, the workman Mr. Balkrishna Naidu does not press his claim for re-employment and that his dispute with the Company is finally settled.

3. It is agreed between the parties that the workman has no claim of whatsoever nature against the Company.

4. It is agreed between the parties that this settlement shall be filed in the pending reference before the Industrial Tribunal, Panaji, in IT/45/89 for a consent award in terms of this settlement.

5. It is agreed between the parties that the amount agreed shall be paid to Mr. Balkrishna Naidu on or before 17-5-93.

Terms of settlement dated 15-5-95 in respect of workman Shri Baptista Dias, Shri Shiva Malpekar and Shri Satya Narayan.

1. It is agreed between the parties that the Party II shall pay the following amounts to the remaining workmen over and above the amounts paid to them towards Notice Pay and Retrenchment Compensation at the time of closure.

2. Mr. Baptista Dias shall be paid Rs. 11,352/- (Rupees eleven thousand three hundred and fifty two only) and Mr. Shiva Malpekar shall be paid Rs. 15,252/- (Rupees fifteen thousand two hundred and fifty two only) towards gratuity, leave encashment, bonus upto 88-89, ex-gratia etc. etc., in full and final settlement of all their legal dues. Mr. Satya Narayan shall not be entitled for any further amounts.

2. It is agreed between the parties that on account of clause (1) above, the workmen Mr. Baptista Dias, Satya Narayan and Shiva Malpeker do not pres their claim for reinstatement and that their dispute with the Party II is finally and conclusively settled.

3. It is agreed between the parties that the workman shall have no claim of whatsoever nature against the Party II.

4. It is agreed between the parties that the amount agreed shall be paid to the workmen on or before 30-6-1995.

There shall be no order as to costs. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI)
Presiding Officer
Industrial Tribunal.

Order

No.28/23/94-LAB.

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

F. O. D. Costa, Under Secretary (Labour).

Panaji, 18th August,1995.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/81/94

Workman Rep. by Gomantak Mazdoor Sangh, ... Workman/Party I

v/s

M/s Venus India Plastics, Bicholim-Goa. .... Employer/Party II

Party I represented by Shri P. Gaonkar.
Party II represented by Adv. M. Pacheco.

Panaji. Dated: 7-7-1995.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 5-8-1994 bearing No.28/23/94-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Venus India Plastics, Bicholim, in terminating the services of two workmen S/Shri Uday Shirodkar and Premanand Parab with effect from 4-9-1991 is legal and justified?

If not, to what relief the workmen are entitled?"

2. On receipt of the reference a case was registered under No.IT/81/94 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Party I was represented by Shri Putu Gaonkar and filed the statement of claim at Exb.3. The Party II was represented by Adv. Shri Pacheco. In the statement of claim the Party I contended that workmen namely Shri Uday Shirodkar and Shri Premanand Parab were working with the Party II for more than 5 years prior to the termination of their services. The workmen were working as Operators in the factory of the Party II at Bicholim. The Party I contended that the Party II terminated the services of the workmen w.e.f. 4-9-1991 without complying with the provisions of law and also did not pay their legal dues. The Party I therefore claimed reinstatement of the workmen with full back wages and continuity in service. After the statement of claim was filed the case was adjourned for filing of the written statement of the Party II. However, the case was adjourned from time to time on the ground that the parties

wanted to settle the dispute. Accordingly on 3-7-95 the Party I and the Party II filled an application dated 3-7-95 Exb.4 along with the terms of settlement dated 30-6-1995 Exb. 5 duly signed by the parties and praying that consent award be passed in terms of the settlement. I have gone through the terms of the settlement at Exb.5 and I am satisfied that the said terms of the settlement at Exb.5 are in the interest of the workman. I, therefore, accept the submissions made by the parties and pass the consent award in terms of the settlement dated 30-6-95 Exb.5.

ORDER

1. It is agreed by and between the parties that Shri Premanand Parab and Shri Uday Shirodkar shall be paid their all legal dues such as notice pay, retrenchment compensation and gratuity on or before 15th July, 1995 by the management/Party II.

2. It is also agreed between the parties that management will pay exgratia at the rate of 15 days wages per year completed service on the date of closure.

There shall be no order as to costs.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI)
Presiding Officer
Industrial Tribunal.

Order

No. 28/21/93-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

F. O. D'Costa, Under Secretary (Labour).

Panaji, 22nd August, 1995.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding officer)

Ref. No. IT/2/94

Shri Anil Naik,
Ponda-Goa. — Workman/Party I

V/s

The Asstt. Engineer,
Sub. Div. III, Works Div. IX (PHE)
Public Works Department,
Borda, Margao-Goa. — Employer/Party II

Party I-Workman absent.

Party II-Employer represented by Adv. A. Agha.

Panaji, Dated: 21-7-1995.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act, 14 of 1947) the Government of Goa, by order dated 27-7-1993 bearing No. 28/21/93-LAB referred the following dispute for adjudication by this Tribunal.

(a) "Whether the demand of Shri Anil Naik for regularisation of services in accordance with Circular No. 2-2/91/CE-PWD-WEC/260 dated 21-11-91 is legal and justified?.

(b) Whether the action of the Executive Engineer, Sub-Division III, Works Division IX (PHW),P.W.D., Borda Margao in terminating the services of Shri Anil Naik, Carpenter/Mason, with effect from 15-1-92 is legal and justified.?

(c) If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No.IT/2/94 and registered A/D notices were issued to the parties. In pursuance to the notice, the parties put in their appearance. The Party I (For short, 'Workman') appeared in person and the Party II (For short, 'Employer') was represented by Adv. A. Agha. The workman filed the statement of claim at Exb. 4. The workman contended that he was employed as a Carpenter in the P.W.D., Works Div.IX, Sub. Division II from May, 1989 and he worked continuously till his services were illegally terminated w.e.f.; 15-1-1992. The said Sub. Division II wherein the workman was working was later on taken over by Sub. Division No.III, Works Division IX (PHE) of the P.W.D. Borda., Margao, Goa. The workman was performing the duties of Carpenter and was also doing other works like masonary and plumbing for about more than 2/1 years and was paid at the rate of Rs. 27 per day towards his services. The workman contented that for the first month after joining the services he was paid his wages and in acknowledgment of the receipt of the wages his singature was obtained on the muster roll Form No. 2179 which was being maintained under the authority of the Executive Engineer, Works Division IX (PHE) P.W.D., Fatorda, Margao, Goa. Thereafter his signatures were being obtained on hand receipts in acknowledgment of the receipt of the wages every month. That the Govt. of Goa, vide Circular dated 21-11-91 directed that list be forwarded of those workmen who were qualified for regularisation in service and laid down certain criteria and requirements for the said purpose. That the workman qualified for regularisation in service in terms of the said Circular dated 21-11-91 and therefore his name was forwarded to the Government and listed accordingly by the Employer in his letter dated 5-12-91 which letter was addressed to the Chief Engineer, P.W.D. However, instead of regularising his services, the workman was verbally told on 15-1-92 by the Party II that he should no longer report for his duty as his services were no longer required. No reasons were given to the workman nor any written communication was made to him and therefore when the workman came for work on 15-1-92 he was not allowed to sign the muster roll nor he was allowed to report for the work. Thereafter the workman approached the Dy. Labour Commissioner complaining about the illegal act done by the Employer. However, the conciliation proceedings before the Dy. Labour Commissioner ended in

failure. The workman therefore in this reference has claimed reinstatement with back wages and also he he has claimed that his services should be regularised in terms of the Government Circular dated 21-11-1991.

3. The Employer filed a written statement at Exb. 5. The Employer contended that the workman was employed as a casual labourer against casual requirements for a few days. The Employer denied that the workman signed on regular muster roll maintained for other regular employees including the temporary and permanent employees. The Employer further contended that the workman was paid on daily wages as per the minimum wages prescribed by the authorities under payment of wages Act. The Employer denied that the workman was entitled to regularisation in services as the circular of the Government dated 21-11-91 was not applicable to the workman. The Employer also denied that the workman was employed as a carpenter. The Employer stated that the workman was not entitled to any of reliefs claimed by him. Thereafter, on the pleadings of the parties, following issues were framed at Exb. 6:

1. Whether Party I proves that he was employed as a Carpenter in PWD. WD. IX, SD. II from May 1989 continuously and that he signed on the Attendance Muster Roll which was also signed by the permanent employees of the said Division ?

2. Whether Party I proves that he qualified for regularisation in service in terms of the circular no. 2-2/91/ CE-PWD-WEC/260 dated 21-11-91 and, therefore, his demand for regularisation is legal and justified ?

3. Whether Party I proves that the termination of his services by the Executive Engineer, Sub-Division No. III, Works Div.IX (PHE), PWD, Borda, Margao, w.e.f. 15-1-92 is illegal and unjustified ?

4. Whether Party I is entitled to any relief ?

5. What Award ?

4. After the issues were framed the case was fixed for evidence of the workman on 15-5-95 as the burden of proving all the issues was on the workman. However, on the said date the workman did not attend the hearing and the case was adjourned to 10-7-95 for the evidence of the workman. However, on this date also, the workman remained absent and hence no evidence of the workman could be recorded. From the records of the case it can be seen that on the earlier occasions also i.e. right from 13-2-95 the workman had failed to attend the hearings fixed from time to time.

5. The reference of the dispute has been made by the Government at the instance of the workman since he challenged the action of the Employer in terminating his services w.e.f. 15-1-92 and also not considering his demand for regularisation of his service in accordance with the circular dated 21-11-91 and as such he raised an industrial dispute. The Bombay High Court, Panaji bench in the case of V. N. S. Engg. Services v/s Industrial Tribunal, Goa, Daman and Diu and another reported in FJR Vol. 71 at page 393 has held that there is nothing in the Industrial Disputes Act, 1947 that indicates a departure from the general rule that he who approaches a Court for a relief should prove his case i.e. the obligation to lead evidence to establish an allegation made by a party is on the party making the allegation, the test being that he who does not lead evidence must fail. Their Lordships of the Bombay High Court further held that the provisions of Rule 10-B of the Industrial Disputes (Central Rules 1957) which requires the party raising a dispute to file a statement of demands relating only to the issue in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the Opposite party involved, clearly indicates that the party who raises the industrial dispute is bound to prove the contention raised by him and an industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case, i.e. in the case of V. K. Raj Industries v/s Labour Court (I) and others reported in 1981 (29) FLR 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The High Court has further held that it is well settled that if a party challenges the validity of an order, the burden lies on him to prove the illegality of the order and if no evidence is produced the Party invoking the jurisdiction must fail. The High Court has also held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief. I am entirely in agreement with the said decision of the Allahabad High Court.

6. In the present case the dispute was raised by the workman as regards his regularisation in services as well as illegal termination of his service and as it was at his instance that the reference was made by the Government, the burden was on the workman to prove that the action of the Employer in not regularising his service and in terminating his services was illegal and unjustified. After the framing of the issues, the workman was given opportunities to lead the evidence as the burden to prove the said issues was on him. The records and proceedings also show that the workman had remained absent from 13-2-95 on all the dates of hearing. Since the workman has not led any evidence in support of his contention that the termination of his services by the Employer is illegal and unjustified and also that the refusal on the part of the Employer of his demand to regularise his services was illegal and unjustified, there is no material before me to hold that the action of the Employer in terminating his services as well as not regularising his services is illegal and unjustified. In the circumstances, I hold that the workman has failed to prove that the action of the Employer in not regularising his services and also in terminating his services with effect from 15-1-1992 is illegal and unjustified, and hence I pass the following order.

ORDER

It is hereby held that the demand of the Workman Shri Anil Naik for regularisation or his services in accordance with Circular No. 2-2-91 CE-PWD-WEC-260 dated 21-11-1991 is not legal and justified. It is further held that the action of the Employer-Executive Engineer, Sub. Division III, Works Division

IX (PHE), P. W. D., Borda, Margao, Goa, in terminating the services of the workman Shri Anil Naik, Carpenter/Mason, with effect from 15-1-1992 is legal and justified.

No order as to costs. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI)
Presiding Officer
Industrial Tribunal.

Order

No. 28/17/89-ILD

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

F. O. D'Costa, Under Secretary (Labour).

Panaji, 11th September, 1995.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/34/89

Shri Rudolf Noronha & 4 Others,
Rep. by Goa Trade & Commercial
Workers Union,
Panaji - Goa. — Workmen/Party I

v/s

M/s Kane Industries,
Navelim,
Margao-Goa. — Employer/Party II

Party I represented by Adv. Raju Mangueshkar.

Party II represented by Adv. P. J. Kamat.

Panaji, Dated: 14-8-1995.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 26th April, 1989 bearing No. 28/17/89-ILD referred the following dispute for adjudication by this Tribunal;

> "Whether the action of the management of M/s Kane Industries, Margao, in closing down the establishment with effect from 16-11-1988 and also terminating the services of the following workmen with effect from 15-11-1988 is legal and justified?
>
> 1. Shri Rudolf Noronha, Turner
> 2. Shri Bhicajee G. Bandivadikar, Turner
> 3. Shri Parshuram Tellapa Kedar, Crank Grinder Operator
> 4. Shri Madhuker Tandel, Horning Operator & Hand Grinder
> 5. Shri Nanda Chari, Shaper and Fitter.
>
> If not, to what relief the workmen are entitled?"

2. On receipt of the reference a case was registered under No. IT/34/89 and registered A. D. notices were issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Party I (For short, 'Union') was represented by Adv. Raju Mangueshkar and the party II (For, short, 'Employer') was represented by Adv. P. J. Kamat. The Union filed its statement of claim which is at Exb. 2. The facts of the case in brief as pleaded in the statement of claim are that the employer is having its factory at Navelim, Goa, and employed about 14 workers designated as Welders, Turners, Fitters, Grinder-Operators, Operators, Shapers etc. That since the employer was paying low wages and did not give extra benefits the workers resolved to form an Union and become members of the Party I-Union namely the Goa Trade & Commercial Workers Union on 21-6-87. That having been informed about the formation of the Union, the employer started harassing and victimising the workmen. Thereafter, the Union submitted a charter of demands dated 11-10-87 to the employer. That since the emloyer did not settle the demands the Union raised a dispute before the Dy. Labour Commissioner. That pursuant to the raising of the dispute, the employer continued the harassment of the workers and retrenched 6 workmen w.e.f. 12-4-88. The Union raised the Industrial Dispute in respect of the said 6 retrenched workers and since the employer did not take back the said workers, the workers resorted to strike which was ultimataly withdrawn on 6-7-88. Thereafter, during the pendency of the discussion on charter of demands, the employer issued a notice of closure dated 15-10-88 by which the workmen mentioned in the reference were to be out of employment. The Union contended that the closure was illegal as the employer has started another Unit in the same Building under the name M/s Goa Auto Re-Conditioning Unit for which new workers were being employed and the machinery of the employer was being used at the Goa Auto Re-Conditioning Unit. The Union contended that since the employer did not disclose the reasons for closing down the factory, the action of the employer was malafide, unjust and illegal. The Union further contended that the employer also did not follow the principles of, "Last come first go", and also did not pay the retrenchment compensation and the other legal dues to the workmen. The Union therefore prayed reinstatement of the workmen with full back wages.

3. The employer filed written statement which is at Exb. 3. The employer contended that the reference was not maintainable as the factory was closed w.e.f. 15-11-88. The employer denied that low wages were paid to the workers or that they were not given other benefits. The employer further denied that the workers were harassed or victimised on having become the members of party I-Union. The employer contended that its workers had formed Union in 1976 and the wages and other benefits were revised on three occasions by negotiations with the Union. The employer admitted that the Union had submitted charter of demands by letter dated 1-10-87. However, the Employer contended that the said demands were exhorbitant and therefore were not acceptable to the employer bacause of

the financial difficulties faced by the employer on account of the growing indiscipline among the workers as a result of which its work suffered and also because there was a recession in the mining business. The employer further contended that due to the lack of work in welding fitting and moulding sections of its establishment, 6 workers from the said sections were retrenched who accepted the legal dues and left the services. The employer denied that any new workers were employed. The employer stated that the workers adopted, 'Go-slow' attitude as a result of which the employer was not getting new work and therefore it had to close down its factory w.e.f. 15-11-88 after giving notice. The employer contended that closing down of its establishment was legal and justified and it was not malafided. The employer therefore submitted that the workmen whose services stood terminated as a result of closure were not entitled to any relief. Thereafter, the Union filed rejoinder which is at Exb. 4.

4. On the pleadings of the parties issues were famed at Exb. 5 and thereafter the case was posted for evidence of the Union. After the evidence of the Union was partly recorded the employer and the Union filed a Memo of Settlement dated 15-9-92 in respect of the workman Shri Nanda Chari along with an application praying for consent award. Thereafter the case was adjourned from time to time for settlement at the request of the parties. Subsequently on 15-5-95 the Union and the employer filed a Memo of Settlement Exb. 11 dated 15-5-95 in respect of Shri Bhicajee G. Bandivadikar and Shri Parshuram Tandel and prayed that consent award be passed in terms of the said settlement Exb. 11. As regards the workman Shri Rudolf Noronha, the Union and the employer filed an application at Exb. 12 stating that his dispute has been already settled and he is already accepted all his legal dues and consequently no dispute existed in respect of the said workman.

5. Since the Union and the employer have admitted that the dispute of the workman Shri Rudolf Noronha is already settled and the workman has accepted all his dues, the dispute does not exist and consequently the reference does not survive as regards the said workman. Therefore, I hold that the dispute does not exist and consequently the reference does not survive as regards the workman Rudolf Noronha.

6. As regards the settlement filed in respect of the workmen Shri Nanda Chari, Shri Bhicajee Bandivadikar, Shri Parsuram Kedar and Shri Madhukar Tandel, I have gone through the said settlements dated 15-9-92 - Exb. 10 and 15-5-95 - Exb. 11 and I find that the said settlements are certainly in the interest of the workmen. I, therefore, accept the submissions made by the Union and the Employer and pass the consent award in terms of the settlements Exb. 10 and Exb. 11.

ORDER

Terms of Settlement dated 15-9-92 Exb. 10 in respect of workman Shri Nanda Chari.

1. It is agreed between the parties that the Company shall pay a sum of Rs. 14,920.40 (Rupees fourteen thousand nine hundred twenty and paise forty only) to Mr. Nanda Chari towards Gratuity, Leave encashment, bonus upto 1988-89 etc. in full and final settlement of all his legal dues.

2. It is agreed between the parties that on account of the payment of the amount in clause (i) above, the workman Mr. Nanda Chari does not press his claim for re-employment and that his dispute with the Company is finally settled.

3. It is agreed between the parties that the workman has no claim of whatsoever nature against the company.

4. It is agreed between the parties that this settlement shall be filed in the pending reference before the Industrial Tribunal, Panaji, in IT/34/89 for a consent award in terms of this settlement.

5. It is agreed between the parties that the amount agreed shall be paid to Mr. Nanda Chari on or before 13-11-92.

Terms of settlement dated 15-5-95 Exb. 11 in respect of the workmen Shri Bhicaji Bandivadekar, Shri Parshuram Kedar and Shri Madhukar Tandel.

1. It is agreed between the parties that the Party II shall pay the following amounts to workmen over and above the amounts offered and paid to them at the time of retrenchment.

(a) Rs. 3038/- (Rupees three thousand & thirty eight only) to Shri Bhicaji Bandivadekar (b) Rs. 6206/- (Rupees six thousand two hundred and six only) to Shri Parshuram Yellappa Kedar and (c) Rs. 12,800/- (Rupees twelve thousand eight hundred only) to Shri Madhukar Tandel towards Gratuity, leave encashment, bonus upto 1988-89, ex-gratia, etc., in full and final settlement of all their claims.

2. It is agreed between the parties that on account of the payment of the amounts in clause (i) above, the workmen do not press their claim for reinstatement and that their dispute with the Party II is finally settled.

3. It is agreed between the parties that the workmen shall haven no claim of whatsoever nature against the Party II.

4. It is agreed between the parties that the amount agreed herein above shall be paid to the workmen on or before 31-5-1995.

No order as to costs. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI)
Presiding Officer
Industrial Tribunal.

No. 28/32/93-LAB

Order

The folowing Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa

F. O. D'Costa, Under Secretary (Labour).

Panaji, 11th September, 1995.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/30/94

Shri Mangaldas P. Naik,
Margao-Goa. — Workman/Party I

v/s

M/s Kadamba Transport Corporation,
Panaji-Goa. — Employer/Party II

Party I represented by Shri K. V. Nadkarni.
Party II represented by Adv. C. J. Mane.

Panaji, Dated: 7-8-1995.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Sec. 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by its order dated 5-8-1993 bearing No. 28/32/93-LAB referred the following dispute for adjudication by this Tribunal:

"Whether the action of the management of M/s Kadamba Transport Corporation Ltd., in refusing to pay full wages to Shri Mangaldas P. Naik, Driver, for the period from 16-5-92 to 7-8-92, is legal and justified. If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No.IT/30/94 and registered A. D. notices were issued to the parties. In pursuance to the said notices, the parties put in their appearance. The Party I (for short, 'Workman') was represented by Shri K. V. Nadkarni and the Party II (For short, 'Employer') was represented by Adv. C. J. Mane. Before the statement of claim was filed by the workman the employer on 19-6-95 filed an application at Exb.4 stating that all the legal dues of the workman were paid and hence the dispute did not survive. The employer also produced a receipt signed by the workman along with the application to evidence that the legal dues have been paid to the workman. Shri Nadkarni representing the workman admitted that in view of the payment of dues of the workman in respect of the period claimed by the workman in the reference, the dispute does not survive.

3. The Employer has produced the receipt to evidence that the full wages due to the workman for the period mentioned in the reference is paid. The receipt shows that the workman has received the full wages for the period from May, 1992 to Aug., 1992 which is not disputed by the workman. In view of the matter, the dispute does not exist and consequently the reference does not survive. Hence, I pass the following order.

ORDER

It is hereby held that the reference does not survive since the dispute does not exist in view of the payment of the full wages to the workman Shri Mangaldas P. Naik, Driver, by the management of M/s Kadamba Transport Corp. Ltd. for the period 16-5-92 to 7-8-92.

No order as to costs. Inform the Govt. accordingly.

Sd/-
(AJIT J. AGNI).
Presiding Officer,
Industrial Tribunal.

Order

No. 28-7-95-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

F. O. D'Costa, Under Secretary (Labour).

Panaji, 29th September, 1995.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/19/95

Shri Sher Bahadur Khorti,
Margao-Goa. — Workman/Party I

V/s

M/s Mabai Hotels,
Margao-Goa. — Employer/Party II

Party I absent.
Party II represented by Adv. E. Dias.

Panaji, Dated: 8-8-1995.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Sec. 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by its order dated 16-3-95 bearing No. 28-7-95-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Mabai Hotel, Margao, in terminating the services of Shri Sher Bahadur Khorti, Watchman with effect from 24-2-94 is legal and justified.

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/19/85 and Regd. A. D. notice were issued to the parties required them to attend the hearing fixed on 2-6-95. On the said date, the Party I (for short, 'Workman") did not appear and the Regd. A. D. notice sent to him was returned unserved with postal endorsement, "Not claimed, return to sender". Thereafter, a fresh notice was again sent to the workman on 4-7-95 requiring him to attend the hearing fixed on 20-7-95. However, the said notice was also returned unserved postal endorsement, "Unclaimed, return to sender". The Party II (For short, 'Employer') was however represented by Adv. E. Dias. Since the workman did not claim the notice sent to him by Regd. post it is deemed that he is served with the notice and no statement of claim was filed by him. Adv. Dias representing the Employer submitted that the Employer did not wish to file any statement/ written statement and prayed that award be passed holding the action of the Employer in terminating the services of the workman as legal and justified since the workman has not participated in the proceedings inspite of the opportunity given.

3. The reference of the dispute has been made by the Government at the instance of the workman since he challenged the action of the Employer in terminating his services with effect from 24-2-94 and as such he raised an industrial dispute. The Bombay High Court, Panaji bench in the case of V.N.S. Engg.. Services v/s Industrial Tribunal. Goa, Daman and Diu & another reported in FJR Vol. 71 at page 393 has held that there is nothing in the Industrial Disputes Act. 1947 that indicates a departure from the general rule that he who approaches a Court for a relief should prove his case i. e. the obligation to lead evidence to establish an allegation, the test being that he who does not lead evidence must fail. Their Lordships of the Bombay High Court held that the provisions of Rule 10-B of the Industrial Disputes (Central Rules 1957) which requires the Party raising a dispute to file a statement of demands relating only to the issue in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the Opposite Party involved, clearly indicates that the party who raised the industrial dispute is bound to prove the contention raised by him and an Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case, i. e. in the case of V. K. Raj Industries v/s Labour Court (I) and Others reported in 1981 (29) FLR 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The High Court has also held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief. I am entirely in agreement with the said decision of the Allahabad High Court.

4. In the present case since the dispute was raised by the workman and it is at his instance the reference was made by the Government, the burden was on the workman to prove that the action of the Employer in terminating his services w.e.f. 2-4-94 was not legal and justified. However, the workman inspite of having been given several opportunities to appear in the matter and file his statement of claim did not do so. The Registered A. D. notice sent to the workman were returned unserved with postal endorsement, "Not claimed - return to sender". This clearly shows that the workman was not interested in proceeding with the matter. Therefore, there is no material before me to hold that the action of the Employer in terminating the services of the workman was not legal and justified. In the absence of any evidence it cannot be held that the action of the Employer in terminating the services of the workman is illegal.

In the circumstances, I hold that the workman has failed to prove that the action of the Employer in terminating his services with effect from 24-2-94 is not legal and justified and hence I pass the following order.

ORDER

It is hereby held that the action of the management of M/s. Mabai Hotels, Margao-Goa, in terminating the services of Shri Sher Bahadur Khorti, Watchman, with effect from 24-2-1994 is legal and justified.

No order as to costs. Inform the Govt. accordingly.

Sd/-
(AJIT J. AGNI)
Presiding Officer
Industrial Tribunal.

Order

No. 28/46/89-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

F. O. D'Costa, Under Secretary (Labour).

Panaji, 2nd November, 1995.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/69/89

Workmen
Rep. by the General Secretary
All Goa General Employees Union
P. O. Box No. 90
Vasco da Gama — Workmen/Party I

v/s

M/s Toyo Analytical Services
Main Road,
Ponda Goa — Employer/Party II

Party I - represented by Adv. T. Pereira

Party II - represented by Adv. M. S. Bandodkar

Panaji, Dated: 9-10-95.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act 1947, the Government of Goa by order dated 14th September, 1989 bearing No. 28/46/89-LAB, referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Toyo Analytical Services, Ponda, in terminating the services of the following workmen by closing down the establishment w.e.f. 20-1-1989 is legal and justified.

1. Miss Luiza Mascarenhas, Packer
2. Miss Chaya Naik, Packer
3. Miss Shamal Naik, Packer
4. Miss Bharati Borkar, Packer
5. Miss Romana Rodrigues, Packer
6. Mrs. Marcelina Mascarenhas, Packer.

In not, to what relief the workmen are entitled?"

2. On receipt of the reference, a case was registered under No. IT/69/89 and registered A/D notice was issued to the parties. In pursuance of the said notice, the parties put in their appearance. The party I (For short "Union") filed the statement of claim which is at Exb. 2. The facts of the case in brief as pleaded by the Union are that the Party II (For short "Employer") is a partnership firm having its establishment at Farooqui Mansion, Ponda Goa. That the employer has its other two sister concerns namely, Toyo Pharmaceuticals & Toyo Pharmaceuticals Pvt. Ltd., who also function from Farooqui Mansion, Ponda Goa. That the business of all the 3 concerns is that of purchase of bulk pharmaceuticals raw material, manufacturing of medicine and other pharmaceuticals product, testing and verifying the quality of the products and packing and marketing the same. That the workmen employed under the said concerns are rendering common services to all said concerns. Similary, the manegerial staff also renders service in common and exercise supervisory and disciplinary control over all the employees of the said concerns. That all the employees of the three concerns decided to join the all Goa General Employees Union and they became the members of the Union w.e.f. 13-7-88. The employer was informed about the formation of the Union and also the names of the Union's local committee office bearers were furnished to the employer. That, after the employees joined the Union, the employer started harassing the workers by dismissing some from service, transfering some, and issuing false charge-sheets to some. That the employer also started pressurising the workers to resign from the Union. Thereafter, the employer issued a letter dated 8-12-1988 to the workers stating that they should report for work at a new place in the next building i.e. Flat No. 2, Ground Floor, Parag Housing Society Ltd., Shantinagar, Ponda Goa. The workers protested about the change of place of work by letter dated 22-12-1988 as the same was done without complying with the provisions of law. That the workmen named in the reference reported for work at the new premises but they had to remain idle without work as all the work of the employer was being done at the old premises. The Union contended that the so called closure of the establishment notified by the employer by letter dated 17-1-89 is malafide, cunning and pre-planned only to harass, torture and punish the workmen for having joined the Union. The Union further contended that after terminating the services of the workmen named in the reference, the employer employed some new workers and started operating extra shifts on Sundays and also an extra night shifts by increasing the workload on the existing workers. The Union contended that the so called closure of the establishment by the employer was illegal and unjustified and hence the workmen were entitled for reinstatement with full back wages.

3. The employer filed the written statement which is at Exb. 3. The employer stated that the reference was bad in law since the dispute referred was not an Industrial dispute as it relates to the legality and justifiability of the closing the establishment w.e.f. 20-12-89 which cannot become the subject matter of dispute under the law. The employer stated that it is carrying on the business of packing of pharmaceuticals product of M/s. Jaffman Laboratories, M/s Toyo Pharmaceuticals M/s Navin Laboratories and M/s UCO Laboratories and because of the paucity of space and requirements under Drugs and Cosmetics Acts, the employer carried on its business in the premises of M/s Toyo Pharmaceuticals. However, subsequently since the presence of the workers of the employer was found to be affecting the work of M/s Toyo Pharmaceuticals the employer shifted its activities to Varsha Bldg., Ponda Goa in November 1988. The employer contended that after it shifted its activities in the new premises it was found that there was lack of orders from its customers and, therefore, it could not provide work to the existing workmen. The workmen, therefore, were required to be kept idle for two months, but their salary was paid. That since the employer still could not secure orders, the employer closed its establishment permanently w.e.f. 20-1-89 and the workmen were informed about the same by letter dated 17-9-89. The employer stated that the workmen were asked to report on 16-2-89 between 4.00 p.m. to 5.30 p.m. to collect all their legal dues including notice pay, closure compensation, earned salary etc., but the workman refused to collect their legal dues. The employer contended that it had complied with all the legal provisions in closing the establishment permanently. The employer denied that it started harrassing and victimising the workers because they had joined the Union. The employer further denied that the closing of the establishment was malafide, cunning, as a matter of harassment or that it was in fact to punish the workmen. The employer, therefore, stated that the claim of the Union for reinstating the workmen with full back wages was illegal and without any substance.

4. Thereafter, the Union filed rejoinder which is at Exb. 4 and subsequently on the pleadings of the parties, issues were framed at Exb. 5. After the issues were framed, the Government of Goa by order dated 11-3-91 bearing No. 28/46/82-LAB amended the schedule of the reference by deleting the words "by closing down the establishment". Therefore, after the amendment, the reference was to the effect whether the action of the management of M/s Toyo Analytical Services, Ponda, in terminating the services of the workmen named in the reference w.e.f. 20-1-89 is legal and justified?

5. After the evidence in the matter was partly recorded and the case was fixed for hearing on 22-9-95. Adv. T. Pereira for the Union and Adv. Shri M. S. Bandodkar for the employer submitted that the dispute between the parties was amicably

settled, and they filed the Memo of settlement dated 22-9-95 duly signed by the parties praying that the Award be passed in terms of settlement. I have gone through the terms of settlement and I am satisfied that they are certainly in the interest of the workmen. In the circumstances, I accept the submissions made by the parties and pass the Consent Award in terms of settlement dated 22-9-95 Exb. 14.

ORDER

(a) 1. It is agreed by the management that, (1) Miss Shamal Naik shall be paid Rs. 8000/- (Rupees eight thousand only).

2. Miss Chaya Naik shall be paid Rs. 10,800/- (Rupees ten thousand eight hundred only)

3. Miss Bharati Borkar shall be paid Rs. 10,800/- (Rupees ten thousand eight hundred only).

4. Miss Romana Rodrigues shall be paid Rs. 10,800/- (Rupees ten thousand eight hundred only) in full and final settlement of their all claim arising out of the employment and whatsoever nature including claims arising out of the reference.

b) 1. Miss Shamal Naik, (2) Miss Chaya Naik, (3) Miss Bharati Borkar, (4) Miss Romana Rodrigues shall accept the amount mentioned in clause (a) in full and final settlement amount of their claim arising out of their employment and the above reference and further confirms that they shall have no claim of whatsoever nature against the firm including any claim of reinstatement or re-employment.

c) It is agreed between the parties that the workmen concerned in the above reference shall be paid the amount mentioned in clause (a) in four equal instalment as follows:

on 22-9-95 — 25%
11-10-95 — 25%
11-11-95 — 25%
11-12-95 — 25%

d) It is agreed by the workmen that amount mentioned in clause (a) shall also include gratuity, Leave salary, Bonus, Ex. gratia if any.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI)
Presiding Officer
Industrial Tribunal.

Order

No. 28/29/92-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

F. O. D'Costa, Under Secretary (Labour).

Panaji, 2nd November, 1995.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/50/92

Workmen
Rep.By All Goa General Employees Union
P. O. Box. No. 90
Vasco da Gama — Workman/Party I

v/s

M/s Toyo Pharmaceuticals
Farooqui Mansion, Main Road
Ponda Goa. — Employer/Party II

Party I represented by Adv. T. Pereira

Party II represented by Adv. M. S. Bandodkar

Panaji, Dated: 9-10-95.

AWARD

In exercise of the Powers conferred by clause (d) of Sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Government of Goa, by order dated 28-7-92 bearing No. 28/29/92-LAB, referred the following dispute for adjudication by this Tribunal.

1. "Whether the action of the management of M/s Toyo Pharmaceuticals, Ponda Goa, in terminating the services of Shri Laximikant K. Chari w.e.f. 5-2-1991 is legal & justified?

2. If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/50/92 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Party I (For short 'Union') was represented by Adv. T. Pereira and the Party II (For short 'Employer') was represented by Adv. M. S. Bandodkar. The Union filed the statement of claim which is at Exb. 4. The Union contended that the employer issued a show cause notice dated 16-8-90 to the workman Shri Laximikant K. Chari (For short 'Workman') who submitted his explanation to the same by reply dated 20-8-90. However, by letter dated 20-8-90, the employer informed the workman that his explanation was found unsatisfactory and hence he was placed under suspension pending enquiry. Thereafter, an enquiry was

instituted against the workman and one Shri V. N. Naik was appointed as the enquiry officer. On 29-12-90, the workman attended the enquiry, but the enquiry officer remained absent and, therefore, the employer told the workman to appear on 4-1-91 at 10.00 a.m.. However, on this date also, the enquiry officer remained absent and the employer told the workman that he would be intimated the next date of enquiry by post. However, no date was intimated to the workman by post nor any subsistance allowance was paid to him. The Union, therefore, raised an Industrial Dispute before the Assistant Labour Commissioner. In the proceedings before the Asstt. Labour Commissioner, the employer stated that the enquiry proceedings were held ex-parte against the workman and that he could not collect the wages during the suspension wages at any time. However, when the workman went to collect the wages the employer refused to pay the same. Thereafter, the employer informed the workman in the presence of the Asstt. Labour Commissioner that the services of the workman was terminated w.e.f. 5-2-91. The conciliation proceedings held by the Asstt. Labour Commissioner resulted in failure and the failure report was accordingly made to the Government. The Union contended that the termination of the services of the workman was illegal and unjustified and it was done without holding proper enquiry. The Union, therefore, prayed that the employer be ordered to reinstate the workman with full back wages.

3. Thereafter, when the case was fixed for hearing on 19-9-95, Adv. T. Pereira representing the Union and Adv. M. S. Bandodkar representing the employer, submitted that the dispute between the parties was duly settled and they filed the memo of settlement dated 19-9-95, duly signed by the parties. They prayed that consent Award be passed in terms of the settlement. I have gone through the terms of the settlement dated 19-9-95 Exb. 5 and I am satisfied that they are certainly in the interest of the workman. I, therefore, accept the submissions made by the parties and pass the Consent Award in terms of settlement dated 19-9-95 which is at Exb. 5.

ORDER

a. It is agreed by the Management that Mr. Laximikant K. Chari shall be paid a sum of Rs. 23,400/- (Rupees twenty three thousand four hundred only) in full and final settlement of his all claim arising out of the employment and whatsoever nature including claims arising out of the reference.

b. Mr. Laximikant K. Chari shall accept the amount mentioned in clause (a) in full and final settlement of his claim arising out of his employment and the above reference and further confirms that he shall have no claim of whatsoever nature against the Firm including any claim of reinstatement or re-employment.

c. It is agreed between the parties that the workman concerned in the above reference shall be paid the amount mentioned in clause (a) in four equal instalments as follows:

on	19-9-95 —	25%
	11-10-95 —	25%
	11-11-95 —	25%
	11-12-95 —	25%

d. It is agreed by the workman that amount mentioned in clause (a) shall also include Gratuity, Leave salary, Bonus Ex-Gratia if any.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI)
Presiding Officer
Industrial Tribunal.

Order

No. 28/41/94 LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa,

F. O. D'Costa, Under Secretary (Labour).

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/4/95

Kum. Mali Y. Amonkar,
Surla, Barazan Khodgini,
Sanquelim-Goa. — Workman/Party I

v/s

M/s Shri Rudreshwar Dairy
Co. op. Society Ltd. alias
Shri Rudreshwar Sahakari Dugdh
Utpadak Saunstha Maryadit,
Harvalem, Sanquelim-Goa. — Employer/Party II

Party I - absent.

Party II - absent.

Panaji, Dated: 5-7-1995.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 20-12-1994 bearing No. 28/41/94-LAB referred the following issue for adjudication by this Tribunal.

"whether the action of the management of M/s Shri Rudreshwar Dairy Co.op. Society Ltd. alias Shri Rudreshwar Sahakari Dugdh Utpadak Saunstha Maryadit, Harvalem, post Sanquelim, Goa in terminating the services of Kum. Mali Y. Amonkar, Secretary, with effect from 18-12-91 is legal and justified"

If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/4/95 and registered A/D notices were issued to the parties requiring them to attend the hearing fixed on 28-2-95 at 10.30 a. m. In pursuance to the said notice the Party I (for short, "workman') and the Party II (for short 'Employer') attended the hearing fixed on 28.2.95. The case was adjourned to 31-3-95 for filing of the statement of claim by the workman. However, on the said date the husband of the workman appeared and sought time to file statement of claim on the ground that his wife-workman is sick. On the said date the employer remained absent and the case was adjourned to 18-4-95 for filing of the statement of claim by the workman. However, on the said date as well as on subsequent dates i.e. on 1-6-95 and 30-6-95 neither the workman nor the employer attended the hearings and no statement of claim was filed on behalf of the workman.

3. The reference of the dispute has been made by the Govt. at the instance of the workman since she challenged the action of the employer in terminating her services w.e.f. 18-12-91 and as such she raised an industrial dispute. The Bombay High Court, Panaji branch in the case of V. N. S. Engg. & Services v/s Industrial Tribunal, Goa, Daman and Diu and another in Writ Petition No. 213 of 1985 has held that there is nothing in the Industrial Disputes Act, 1947 that indicates a departure from the general rule that he who approaches a Court for a relief should prove his case i.e. the obligation to lead evidence to establish an allegation made by a party is on the party making the allegation, the test being that he who does not lead evidence must fail. Their Lordships of the Bombay High Court further held that the provisions of Rule 10-B of the Industrial Disputes, (Central Rules 1957) which requires the party raising a dispute to file a statement of demands relating only to the issues in the order of reference for adjudication within 15 days from the receipt of the order of refernce and forward copies to the Opposite party involved, clearly indicates that the party who raises the industrial dispute is bound to prove the contention raised by him and an Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case, i.e. in the case of V. K. Raj Industries v/s Labour Court (I) and others reported in 1981 (29) FLR 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in nature even thought the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The High Court has further held that it is well settled that if a party challenges the validity of an order, the burden lies on him to prove the illegality of the Order and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has also held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief. I am entirely in agreement with the said decision of the Allahabad High Court.

4. In the present case, since the dispute was raised by the workman and that it is at her instance that the reference was made by the Government, the burden was on the workman to prove that the action of the employer in terminating her services was illegal and unjustified. However, the workman inspite of having been given several opportunities to file the statement of claim did not do so nor produced any evidence. In fact, the workman did not participate in the proceedings after 31-3-95. therefore, there is no material before me to hold that the action of the employer in terminating the services of the workman was illegal or unjustified. In the absence of any evidence it cannot be held that the action of the employer in terminating the services of the workman is illegal. In the circumstances, I hold that the workman has failed to prove that the action of the employer in terminating her services with effect from 18-12-91 is illegal or unjustifiled and hence I pass the folowing order.

ORDER

It is hereby held that the action of the management of M/s. Shri Rudreshwar Dairy Co.op. Society Ltd., alias Shri Rudreshwar Sahakari Dugdh Utpadak Saunstha Maryadit, Harvalem, Post Sanquelim, Goa, in terminating the services of the workman Kum. Mali Y. Amonkar, Secretary, with effect from 18-12-91 is legal and justified.

No order as to costs. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. 28-20-91-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

F. O. D'Costa, Under Secretary (Labour).

Panaji, 18th October, 1995.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

File No. IT/23/91

Shri Ashok Kumar & 35 Others,
Rep. by Goa Trade & Commercial
Workers Union, Panaji. ... Workmen/Party I

v/s

M/s D. Srimanth, Contractor of
M/s Kay Pee Steels Pvt. Ltd.,
Tisk Usgao-Goa. ... Employer/Party II

Party I/Advocate absent.

Party II absent.

Panaji, Dated: 15-9-1995.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 the Government of Goa by order dated 28-5-1991 bearing No. 28/20/91-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the termination of services with effect from 13-11-1990 of the following 36 workmen employed by the management of M/s Kay Pee Steels Pvt. Ltd., through Mr. D. Srimanth, Contractor in their factory at Tisk Usgao is legal and justified.

1.	Ashok Kumar	2.	Maruthi Kadam.
3.	Subha Raidy	4.	Dhaneshwar Singh
5.	Balkrishna	6.	Mahesh
7.	Dinkar Patil	8.	Dayanand
9.	Prakash Naik	10.	Mahadev D.
11.	Moula Sab	12.	Harishchandra
13.	Ramkripal	14.	Rampal
15.	Lakshiman Shinde	16.	Khemunna
17.	Manik	18.	Gopal Krishna
19.	Umesh Kurtikar	20.	Prakash Mare
21.	Maruthi Patil	22.	Akber
23.	Ramkrishna	24.	Tulshidas Dhalkar
25.	Ramchandra	26.	Promod
27.	Somnath	28.	Anand Bhatkar
29.	Alok Naik	30.	Bayas
31.	Ranganath	32.	Virendra
33.	Kalusing	34.	Umesh Patil
35.	Khepanna	36.	Vilas Gagepatil

If not, what relief the workmen are entitled to either from the management of M/s Kay Pee Steels Pvt. Ltd. or from Shri D. Srimanth, contractor or from both.?

2. On receipt of the reference a case was registered under No. IT/23/91 and registered A. D. notice was issued to the parties. In pursuance to the notice, the parties put in their appearance. The Party I (for short, 'Union') filed its statement of claim at Exb. 3. The Union contended that the Pary II-M/s. Kay Pee Steels Pvt. Ltd., is having its engineering work shop at Usgao and it manufactures steel angles, iron bars etc. That M/s Kay Pee Steels Pvt. (for short, 'employer') employs about 50 to 60 workers and the work is carried out in two shifts. That the workmen working with the employer are designated as Maintenance Mechanics, Wiremen, Timbermen, Mould Operator, Plate Machine Helper etc. That the workmen named in the reference (for short, 'Workmen') were issued attendance cards by the employer and the said cards used to be collected by the end of each month for payment. The Union contended that Party II Shri D. Srimanth (for short, 'Contractor') was working with the employer as a Supervisor and he was planted as a Contractor by the employer for some ulterior motive. The Union therefore contended that the workmen in fact were employed by the employer. That on 13-11-90 the employer and contractor refused employment to the workmen w.e.f. 13-11-90 without giving them any notice or reasons for refusal of employment. The contention of the Union is that after retrenching the workmen the employer employed another 60 workars. The Union therefore contended that the action of the management of the employer in terminating the services of the workmen is illegal and unjustified and hence claimed that the workmen were entitled to reinstatement with full back wages.

3. The employer filed the written statement which is at Exb. 5. The employer contended that the manufacturing process had been commenced in the year 1985 by one Mr. K. S. Chadda. That the manufacturing unit was taken over by the employer in July, 1987 and that when the unit was taken over there were no employees on the rolls of the company and therefore the employer employed its own employees and commenced the manufacturing process after engaging the services of a contractor. The employer contended that the steel ingots are manufactured in the mini steel plant of the employer and it involves operations which are traditionally carried out by the workmen from Bihar and U. P. That therefore this work is assigned to a contractor who is conversant with the manufacturing process and who employs his own workers. That the contractor is paid on the basis of the tonnage every succeeding month. The contractor is responsible to the employer if the goods are not produced of the required quality and the contractor is governed by the terms and conditions of the agreement executed between the contractor and the employer. The employer contended that at the time of the taking over of the manufacturing unit, the employer had engaged the services of the contractor Shri D. Srimanth. The contract stood terminated on account of the eflux of time and therefore the employer asked the contractor to collect his dues. Accordingly, the contractor collected his dues and shifted out of Goa along with his workforce. That thereafter the employer engaged the services of Shri D. Krishnappa and subsequently that of one Shri Yadav. The employer denied that it violated the provisions of the contract Labour Regulations Act and stated that it was the responsibility of the contractor to pay the wages of the workmen. As regards the termination of the services of the workmen the employer contended that it was the responsibility of the contractor to inform about the same to the workmen as they were his employees and not of the employer. The employer therefore contended that the question of paying compensation to the employees by the employer did not arise. The employer denied that there was any employer-employee relationship between the workmen and the employer. The employer also denied that the workmen were employed by the employer or that the contractor was working as a Supervisor with the employer. The employer therefore contended that the Union was not entitled to any relief as claimed.

4. The Contractor also filed a written statement which is at Exb. 8. The Contractor admitted that the workmen were employed by him and that there was an agreement executed by him with the employer dated 1-4-90. The Contractor further stated that the payment of wages was made by him to the workmen. He further stated that the notice dated 2-11-90 was displayed on the notice board informing the workmen that in view of the termination of the Contract w.e.f. 13-11-90 he would not be able to provide emplyment to the workmen with the employer and offered employment to the workmen at Goa Steel Rolling Mills, Bicholim. The Contractor stated that some workmen who reported for work at Goa Steel Rolling Mills left the place of employment without any explanation or intimation and did not report thereafter. He further stated that the workmen were also given offer of emploment at Bhopal. However, they neither reported for work nor gave any information to the

contractor. He further contended that all the dues of the workmen were paid by him and the Office of the Labour Commissioner was duly notified in this respect. The contractor denied that he was working as a Supervisor with the employer or that he was not a contractor. He contended that the claim of the Union was false and stated that the Union or the workmen were not entitled to any relief. The Union filed a rejoinder controverting the pleadings of the contractor and the employer.

5. On the pleadings of the parties following issues were framed:

1. Does Party No. I prove that 36 workmen named in the schedule were the employees of Party No. II ?

2. If yes, does Party No. I prove that the services of 36 workmen were illegally terminated by Party No. II ?

3. If yes, are 36 workmen entitled to any relief ?

4. Does Party I/Union prove that it is entitled to represent the 36 workmen named in the schedule?

5. Does Party II(2) prove that in view of the termination of the contract of employment by Party No. II M/s Kay Pee Steels Pvt. Ltd., he was not able to provide employment to the 36 workmen named in the schedule.?

6. Does Party II (2) prove that he had offered alternate employment to the 36 workmen named in the schedule, who refused the same offer?

7. What award or order?

6. After the issues were framed the case was fixed for the evidence of the Union. On 6-2-95 Adv. G. K. Sardessai who was representing the employer submitted that he wanted to withdraw his vakalatnama filed by him on behalf of the employer and hence he was directed to give proper notice to the employer and the case was adjourned to 13-3-95. On the said date Adv. Raju Mangueshkar prayed for time to lead evidence on behalf of the Union and Adv. Sardessai filed an application for permission to withdraw his appearance on behalf of the employer. He produced the copy of the registered A. D. notice dated 14-2-95 sent by him to the employer along with the A. D. card with postal endorsement. Adv. Sardessai was allowed to withdraw his appearance on behalf of the employer. The case was thereafter adjourned to 20-4-95 for the evidence of the Union. On the said date neither the employer nor the contractor appeared. Infact the contractor did not take part in the proceedings after the filing of the written statement. Adv. Mangueshkar representing the Union submitted that the workmen were not contacting him and hence he wanted to withdraw his appearance. Adv. Mangueshker was directed to give proper notice to the Union and the case was adjourned to 10-7-95 for the evidence of the Union. However, on the said date none of the parties appeared and hence the evidence of the Union was closed and the case was adjourned to 31-7-95 for the evidence of the employer and the contractor. However, on this date also none of the parties appeared and hence the evidence of the employer and the contractor was closed.

7. THe reference of the dispute was made by the Government at the instrance of the Union since it challenged the action of the employer and the contractor in terminating the services of the workmen w.e.f. 13-11-90. The High Court of Bombay, Panaji Bench in the case of V. N. S. Engg. Services v/s Industrial Tribunal, Goa, Daman and Diu and another reported in FJR Vo. 171 at page 393 has held that there is nothing in the Industrial Disputes Act, 1947 that indicates a departure from the general rule that he who approaches a Court for a relief should prove his case i. e. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation, the test being that he who does not lead evidence must fail. Their Lordships of the Bombay High Court further held that the provisions of Rule 10-B of the Industrial Disputes (Central Rule 1957) which requires the party raising a dispute to file a statement of demands relating only to the issue in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the Opposite Party involved, clearly indicates that the party who raises the industrial dispute is bound to prove the contention raised by him and an Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case, i. e. in the case of V. K. Raj Industries v/s Labour Court (I) and others reported in 1091 (29) FLR 194, the Allahabad High Court has held that proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The High Court has further held that it is well settled that if a party challenges the validity of an order, the burden lies on him to prove the illegality of the order and if no evidence is produced the Party invoking the jurisdiction must fail. The High Court has also held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief. I am entirely in agreement with the said decision of the Allahabad High Court.

8. In the present case the dispute was raised by the Union as regards the termination of the services of the workmen w.e.f. 13-11-90. According to the Union the termination of the serviees of the workmen was illegal and unjustified. Since the Union challenged the action of the employer and the contractor in terminating the services of the workmen and the reference was made by the Government at the instance of the Union, the burden was on the Union to prove that the action of the employer and the contractor in terminating the services of the workmen was illegal and unjustified. After the framing of the issues the Union was given several opportunities to lead the evidence as the burden was on the Union to prove that the termination of the services of the workmen was illegal and unjustified. Since the Union did not lead any evidence in support of its contention, there is no material before me to hold that the action of the employer and the contractor in terminating the services of the workmen is illegal and un-justified. In the circumstances, I hold that the Union has failed to prove that the termination of the services of the workmen w.e.f. 13-11-90 by the employer through the contractor is illegal and unjustified and hence I pass the following order.

It is hereby held that the termination of services with effect from 13-11-90 of the 36 workmen mentioned in the reference, and employed by the management of M/s Kay Pee Steels Pvt. Ltd., through Mr. D. Srimanth, Contractor in their factory at Tisk, Usgao is legal and justified and the workmen are not entitled to any relief.

There shall be no order as to costs.

Inform the Government accordingly about the passing of the award.

Sd/-
(AJIT J. AGNI)
Presiding Officer,
Industrial Tribunal.

Order

No. 28/7/94-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

J. M. de Almeida, Jt. Secretary (Labour).

Panaji, 6th December, 1995.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/50/94

Shri N. A. Balraj
C/o Smt. Arcanjela F'des,
Behind Civil Court
Quepem Goa ... Workman/Party I

v/s

M/s Atlantic Spinning & Weaving Mills
Xeldem, Quepem Goa ... Employer/Party II

Party - I/Workman represented by Adv. Shri C. J. Mane.

Party II/Employer represented by Adv. Shri M. S. Bandodkar.

Panaji, Dated: 13-11-95.

AWARD

In exercise of the powers conferred by clause (d) of sub-section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 4-4-94 bearing No. 28/7/94-LAB, referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Atlantic Spinning and Weaving Mills Ltd., Xeldem, in dismissing Shri N. A. Balraj with effect from 20-7-93 is legal and justified.

If not, to what relief the workman is entitled ?

2. On receipt of the reference, a case was registered under No. IT/50/94 and registered A/D notice was issued to the parties. In pursuance of the said notice, the parties put in their appearance. The Party-I (For short "Workman") filed his statement of claim which is at Exb. 4. The facts of the case in brief as pleaded by the workman are that he joined the services of the Party-II (For short "Employer") on 11-1-88 but no letter of appointment was issued to him. That though he served the employer with unblemished record, he was placed under suspension with immediate effect by letter dated 26-3-92. Thereafter a charge sheet dated 8-6-92 was issued to him wherein certain acts of misconduct were alleged against him, and also an enquiry was held. The contention of the workman is that chargesheet was issued and enquiry was held against him with some ulterior motive for his union activities. That the enquiry officer was bias in favour of the workman and he submitted his findings contrary to evidence on record. The contenction of the workman is that the termination of his services by the employer is illegal and unjustified and also the punishment of dismissal is disproportionate. The workman, therefore, claimed that he is entitled to be reinstated with full back wages.

3. The employer filed the Written statement which is at Exb. 6. The employer stated that the workman employed as a Jobber w.e.f. 11-2-88. The employer denied that the workman had unblemished service record or there was no stigma on him. The employer stated that the workman was suspended pending enquiry because he had committed serious acts of misconduct which were detrimental to the smooth functioning of the factory of the employer. The employer denied that the enquiry was conducted by the Inquiry Officer with a bias mind for that his findings were not based on the evidence on record. the employer further denied that the termination of the services of the workman was illegal or unjustified or the punishment of dismissal was disproportionate. The employer stated that the workman was not entitled to any relief as claimed and the reference was liable to be rejected. Thereafter the workman filed the Rejoinder at Exb. 7.

4. On the pleadings of the parties, issues were framed at Exb. 8, and the case was fixed for evidence of the parties. However, on 24-10-95 the workman alongwith his Advocate Shri C. J. Mane and Adv. M. S. Bandodkar representing the employer appeared and submitted that the dispute between the parties was duly settled. They filed the terms of settlement dated 24-10-95, Exb.11 duly signed by the parties and prayed that Consent Award be passed in terms of the settlement. I have gone through the terms of the settlement and I am satisfied that they are certainly in the interest of the workman. I, therefore, accept the submissions made by the parties and pass the consent Award in terms of the settlement dated 24-10-95. Exb. 11.

ORDER

1. It is agreed between the parties that the workman concerned in the reference shall be paid an amount of Rs. 25,000/- (Rupees Twenty Five thousand only), in full and final settlement of his all claim arising out of his employment and arising out of the reference.

2. It is agreed by the above workman that the amount mentioned in clause 1 shall include notice pay, compensation, gratuity, bonus, unpaid salary, leave salary, Ex-gratia including any claim of money or benefits which can be computed in terms of money arising out of the employment.

3. It is agreed by the workman that he shall accept the amount mentioned in clause 1, in full and final settlement of all his claims arising out of the employment and arising out of the reference and he shall not have further claim of any money benefits which can be computed in terms of money, including reinstatement or re-employment and that the entire dispute/ difference is conclusively settled.

4. It is agreed between the parties that the workman shall be given service Certificate.

No order as to costs. Inform the Government accordingly.

Sd/-

(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. 28/46/93-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

J. M. de Almeida, Jt. Secretary (Labour).

Panaji, 6th December, 1995.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/57/94

Shri V. S. Patil
H. No. 128, Igramol
Quepem Goa ... Workman/Party I

V/s

M/s Atlantic Spinning & Weaving Mills
Ltd., P. O. Quepem, Xeldem Goa ... Employer/Party II

Party I/Workmen -represented by Adv. Shri C. J. Mane

Party II/Employer - represented by Adv. Shri M. S. Bandodkar

Panaji, Dated: 13-11-95.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa by order dated 1-11-93, bearing No. 28/46/93-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Atlantic Spinning and Weaving Mills Ltd., Xeldem, in dismissing Shri V. S. Patil w.e.f. 16-4-93 is legal and justified?

If not, to what relief the workman is entitled?

2. On receipt of the reference, a case was registered under No. IT/57/94 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Party I (For short "Workman") filed his Statement of Claim which is at Exb. 4. The facts of the case in brief as pleaded by the workman are that he joined the services of the Party II (For short "Employer") on 2-1-1988 but no letter of appointment was issued to him. That though the workman had unblemished record, he was placed under unspension with immediate effect by letter of suspension dated 28-3-92 and subsequently, charge sheet dated 8-6-92 was issued to him alleging certain acts of misconduct against him. That after the charge sheet was issued, an inquiry was held in respect of the charges levelled against him. The workman contended that the enquiry was held against him with an ulterior motive for his Union activities. That the enquiry officer was bias in favour of the employer and his findings were not based on the evidence on record. The workman also contended that the punishment of dismissal awarded to him was disproportionate. The workman claimed that the termination of his services by the employer was illegal and unjustified and hence he was entitled to reinstatement with full back wages.

3. The employer filed the written statement which is at Exb. 6. The employer stated that the workman was employed as a Supervisor and his salary was more than 1600/- p.m. and since he was doing supervisory work, he was not a " workman" as defined under the I. D. Act, 1947. The employer denied that the workman had a unblemished record and stated that he was suspended from service because he had committed acts of serious misconduct. The employer also denied that the charge sheet issued to the workman and an enquiry held was with ulterior motives because of his Union activities, as contended by the workmen. The employer stated that the enquiry was held in a fair manner and the workman participated in the said inquiry. The employer further stated that the charges of misconduct were proved against the workman and the findings of the enquiry officer were proper. The employer denied that the termination of the services of the workman was illegal or unjustified or that the punishment of dismissal imposed upon the workman was disproportionate. The employer contended that the workman was not entitled to any relief and the reference was liable to be rejected. The workman, thereafter filed the rejoinder which is at Exb. 7.

4. On the pleadings of the parties, issues were framed at Exb. 8 and the case was fixed for evidence. However, on 24-10-95, the workman alongwith his Advocate, Shri C. J. Mane

and Adv. M. S. Bandodkar, representing the employer appeared and submitted that the matter between the parties was duly settled. They filed the terms of settlement dated 24-10-95 Exb. 10 duly signed by the parties and prayed that Consent Award be passed in terms of the settlement. I have gone through the terms of settlement and I am satisfied that they are certainly in the interest of the workman. I, therefore, accept the submissions made by the parties and pass the Consent Award in terms of the settlement dated 24-10-95 Exb. 10.

ORDER

1. It is agreed between the parties that the workman concerned in the reference shall be paid an amount of Rs. 35,000/- (Rupees thirty five thousand only), in full and final settlement of his all claim arising out of his employment and arising out of the reference.

2. It is agreed by the above workman that the amount mentioned in clause 1, shall include notice pay, compensation, gratuity, Bonus, Unpaid salary, leave salary, Ex-gratia including any claim of money or benefits which can be computed in terms of money arising out of the employment.

3. It is agreed by the workman that he shall accept the amount mentioned in clause 1, in full and final settlement of all his claims arising out of the employment and arising out of the reference and he shall not have further claim of any money benefits which can be computed in terms of money including reinstatement or re-employment and that the entire dispute/ difference is conclusively settled.

4. It is agreed between the parties that the workman shall be given a service Certificate.

No order as to costs. Inform the Government accordingly.

Sd/-

(AJIT J. AGNI)
Presiding Officer,
Industrial Tribunal.

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